

A DIGEST OF INDIAN LAW CASES;

CONTAINING

HIGH COURT REPORTS, 1862-1900

AND

PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA,
1836-1900,

WITH AN INDEX OF CASES.

COMPILED UNDER THE ORDERS OF THE GOVERNMENT OF INDIA

BY

JOSEPH VERE WOODMAN,

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW, AND ADVOCATE OF THE HIGH COURT, CALCUTTA.

IN SIX VOLUMES.

VOLUME III: J—M

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JANUARY 1, 1901.

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1836-1900.

J

JAGHIR.

See CHOTA NAAGPUR LANDLORD AND
TENANT PROCEDURE ACT, 1879
[I. L. R., 25 Calc., 390, 399]

See GHATWALI TENURE.

[I. L. R., 5 Calc., 380
I. L. R., 9 Calc., 187
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See GRANT—CONSTRUCTION OF GRANTS

[I. L. R., 9 Bom., 501
I. L. R., 15 Bom., 223
L. R., 18 I. A., 23]

See GRANT—POWER TO GRANT

[8 W. R., 121
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See RESUMPTION—MISCELLANEOUS CASES

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1. ——— Nature of jaghir—Estate for
life—Hereditary grant—A jaghir must be taken,
prima facie, to be an estate, and it is not possible
that it may possibly be hereditary.
OF SURAT

2. ——— Rights and interest of jaghir-
dar—Liability of, to sale in execution of decree—
Bom. Reg. XII, of 1805, s. 31—The rights and

JAILOR.

See CIVIL PROCEDURE CODE, 1882, s. 87.
[4 B. L. R., O. C., 51]

——— in Native States.

See CONFESSION—CONFESSIONS TO POLICE-
OFFICERS I. L. R., 20 Bom., 795

JAIN LAW.

See HINDU LAW—ADOPTION—WHO MAY
OR MAY NOT ADOPT . 10 Bom., 241.

[I. L. R., 1 All., 688
I. L. R., 16 Mad., 182
I. L. R., 23 Bom., 418
I. L. R., 17 Calc., 518]

See HINDU LAW—ADOPTION—WHO MAY
OR MAY NOT BE ADOPTED

[I. L. R., 1 All., 288]

See HINDU LAW—ADOPTION—SECOND,
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TIONS . I. L. R., 8 All., 319

See HINDU LAW—ALIENATION—ALIENA-
TION BY WIDOW—ALIENATION FOR
LEGAL NECESSITY OR WITH CONSENT OF
HEIRS, ETC. I. L. R., 3 All., 55

See HINDU LAW—CUSTOM—GENERALLY
[10 Bom., 241
I. L. R., 16 All., 379]

See CASES UNDER HINDU LAW—INHERIT-
ANCE—SPECIAL LAWS—JAINS

See SUCCESSION ACT, s. 331
[I. L. R., 3 All., 55]

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See CASES UNDER FISHERY, RIGHT OF

See FOREST ACT, s. 45
[I. L. R., 24 Calc., 504
L. R., 24 I. A., 33]

JAMABANDI.

See EVIDENCE ACT, 1872, s. 74.

[I. L. R., 4 Calc., 76]

JAMABANDI PAPERS.See CASES UNDER EVIDENCE—CIVIL CASES
—JAMABANDI AND JAMA-WASH-BAKI
PAPERS.**JAMA-WASH-BAKI PAPERS.**See CASES UNDER EVIDENCE—CIVIL CASES
—JAMABANDI AND JAMA-WASH-BAKI
PAPERS.**JETTISON.**

See SHIPPING LAW.

[I. L. R., 17 Calc., 382
L. R., 16 L. A., 240]**JEWS.**

See RELIGIOUS COMMITTEE.

[I. L. R., 11 Bom., 185]

JHANSI AND MORAR ACT (XVII OF 1886).See HIGH COURT, JURISDICTION OF—N. W.
P.—CIVIL . . . I. L. R., 11 All., 490

s. 8.

See RES JUDICATA—CAUSES OF ACTION.

[I. L. R., 10 All., 517]

JOINDER OF CAUSES OF ACTION.See JURISDICTION—SUITS FOR LAND—
PROPERTY IN DIFFERENT DISTRICTS[12 W. R., 114
I. L. R., 16 All., 359]

See CASES UNDER MISJOINDER.

See CASES UNDER MULTIPARTICULARITY.

See RELINQUISHMENT OF, OR OMISSION TO
SUE FOR, PORTION OF CLAIM.

[I. L. R., 19 Calc., 615]

See SPECIFIC RELIEF ACT, s. 27.

[I. L. R., 1 All., 555]

The sections of the old Code of 1859, relating to joinder of causes of action (ss. 8 and 9), have not been re-enacted in the later Codes.

1. ——— Nature and value of suit as affecting joinder of causes of action—*Civil Procedure Code, 1859, s. 8.*—Under s. 8 of the Code of 1859 it was decided that the words "cognizable by the same Court" referred to the nature of the suit and not to its value; therefore a Principal Sudder Ameen was held to have jurisdiction under that section to try a suit for land and for mesne profits, the entire claim not exceeding his jurisdiction,

JOINDER OF CAUSES OF ACTION

—continued.

although the value of the suit, so far as the claim was for land, was below the value cognizable by him. *LITCHNER PERSHAD DOBNEY v. KALLASCO*

[B. L. R., Sup. Vol., 620
2 Ind. Jur., N. S., 89; 7 W. R., 175]

Overruling *DHURUM RAWOOT v. RAMNATH SARGO* 2 Hay, 595

See *HABO CHUNDER TURKOOBRAMONNE v. ISHTER CHUNDER ROY* 6 W. R., 296

2. ——— Instalments of rent—*Distinct causes of action.*—Instalments of rent were held to form different causes of action. *RAY SOONDUR SHIN v. KRISHNO CHUNDER GOOPKO*

[17 W. R., 380]

SUTTO CHUTEN GHOSAL v. OBBROY NUND DOSS

[2 W. R., Act X, 31]

In a case, however, where the plaintiff was the lessor, and the defendant the lessee, of certain land under an agreement whereby the defendant agreed to occupy the land for two years, and to deliver a certain quantity of paddy at four specified periods, defendant failed to deliver the paddy. In a suit for rent—*Held* that, although the plaintiff might have sued for each instalment of rent as it fell due, the aggregate of such unpaid instalments should be deemed one cause of action. *CHOGGALINGA PHILLAI v. KUMASA VENTRILALAM* 4 Mad., 334

3. ——— Suit for possession and for rent of a house.—A suit for possession of his house and for rent were held to be causes of action properly joined by a plaintiff in one suit. *JAGMOHAN SAHU v. MANI LALL CHOWDERY* 3 B. L. R., Ap., 77

S. C. JUGO MOHUN SARKOO v. MONEE LALL CROWDERY 11 W. R., 542

4. ——— Claims for a hundi and for money paid in excess of rent.—It was held that a claim for a hundi may be joined in one suit with a claim for the return of money paid in excess of rent due. *BRONKHISHORE CHOWDERAIN v. KHEMA SOONDURTEE DOSSER* 7 W. R., 409

KINNOO MONEE DESAI v. SHOHORAM SIKHAR

[3 W. R., 128]

5. ——— Separate suits relying on same title—*Infringement of title.*—It is not the title, but the infringement of it, which constitutes the cause of action; and two suits are not necessarily brought upon the same cause of action merely because the title relied upon in both cases is one and the same. *JARDINE, SKINNER & Co. v. SHAMA SOONDURTEE DESAI* 13 W. R., 196

6. ——— Suit for rent of two different portions of land.—In a suit for rent as of a single howalah, where the defendants pleaded, and the Court found, that the lands constituted two howalahs, it was held not to be necessary to dismiss the suit, if justice could be done between the parties on the other issues. *STROOP CHUNDER CHOWDERY v. NIK-CHAND CHUCKERBUTTY* 13 W. R., 284

JOINDER OF CAUSES OF ACTION

—continued

7 ——— Different suits brought against divers persons.—*Civil Procedure Code, 1859, s 8*—S 8 of the old Code of 1859 prohibited by implication the joinder of divers causes of action against divers persons. **PRABHAD SEN & GOPER DEBEE** 4 N. W., 40

TARA PROSVYO SINGAR & KOOMAREE DEBEE
[23 W. R., 389]

8. ——— Suit to set aside survey award.—*Different independent proprietors dispossessed under same survey award*—A village had been divided into four separate portions with four different parties, who were afterwards dispossessed under one and the same survey award which demarcated the village as appertaining to the defendant's estate. *Held* that the four parties could sue jointly. **AREND CHUNDER GHOSH & KOMUL NARAIN SINGH**
[2 W. R., 219]

9 ——— Suit for possession, for damages for refusal to register, and to enforce registration.—The owner of a share in a talukh granted a *sepatni* thereof to the plaintiff but before registration granted a *sepatni* to the Bengal Coal Company. In a suit against the owner and the Company for possession of the *sepatni* talukh, for

10. ——— Suit for possession of portion of property, and to set aside deeds relating to another portion.—*Joinder of causes of action*—One of three widows of a Mahomedan sued the other two, together with her deceased husband's sons and other heirs, for possession of 18 out of 96

of the estate, on 11th July 1812, granted in favour of one widow over a part of the property in suit and the other

must be remanded to the Judge for trial on the merits. **AMIRAN & ASHUT**

[3 B. L. R., A. C., 190]

S. C. AMERUN & WUSSEHUN 12 W. R., 11

NIDHEE KOO'DOO & GOLUCK CHUNDER MOHANTO
11 W. R., 280

JOINDER OF CAUSES OF ACTION

—continued

12 ——— Distinct causes of action against distinct defendants.—S 9 applied to a suit of the nature described in s 8 and not to a suit in which distinct causes of action against distinct defendants were improperly joined. **PRABHAD SEN & GOPER DEBEE** 4 N. W., 40

KOSILLA KOER & BENHART PATUCK
[12 W. R., 70]

13 ——— Direction to file separate

to land in two separate zillahs and the Subordinate Judge passed an order purporting to be an order under s 9 of the Civil Procedure Code, for the trial of the several causes of action separately, and directed

the appeal lay to the District Judge returned such appeals to the appellant for presentation in the proper Court. A direction in such a case to file separate plaints was not within the scope of s 9 of

a suit. **RUTTA DEBEE & DUMRU LALE**
[2 N. W., 153]

14. ——— Requisites to give right to join.—*Jurisdiction of Court over both causes of action*—The right to join in one suit two causes of action against a defendant cannot be exercised unless the Court to which the plaint is presented has jurisdiction over both causes of action. **KHUMJI JIVRAJU SHETTU & PORUSHOTUM JUTANI**

[I L. R., 7 Mad., 171]

15 ———
suits for
—*Civil Pr*
Code of Civ
joinder of
plaintiff to
but a joinder
causes of action of a different character except in the
cases therein specified. **CHIDAMBARA PILLAI & RAMASANI PILLAI** I L. R., 5 Mad., 161

JOINDER OF CAUSES OF ACTION

—continued.

16. ——— Suit for specific performance and return of money advanced on agreement—*Civil Procedure Code, 1877, s. 41—Misjoinder.*—The plaintiffs sued for specific performance of an agreement in writing which set forth, *inter alia*, that the defendants had agreed to sell, etc., under "certain conditions as agreed upon." Part of the purchase-money had been advanced by the plaintiffs to the defendants, for which the defendants had given their promissory notes; and the plaint contained a prayer that the defendants be ordered to pay over the amount of the notes. *Held* (affirming the decision of WILSON, J.) that there was no misjoinder of causes of action within the meaning of s. 44, rule (a), of the Code of Civil Procedure (Act X of 1877). *CITTA v. BROWN*, I. L. R., 6 Cal., 328 [5 C. L. R., 487; 7 C. L. R., 171]

17. ——— Suit for administration and accounts of separate estates—*Civil Procedure Code, 1882, s. 44.*—The plaintiffs, who were the widow and daughter of A, and the executor of the will of A's father (B) for administration and account. There were four distinct subjects of claim in the plaint, viz., (1) the estate of A's great-grandfather, (2) the estate of A's grandfather, (3) the jewels and ornaments which formed the stridhan of A's mother which were in A's possession at the time of his death, (4) a sum of Rs. 1,00,000 which it was alleged that B had settled on A at the time of his marriage. Subsequently to the filing of the suit, the first plaintiff amended the plaint and claimed the jewels and ornaments, which formed the subject-matter of the third claim, as her own property, alleging that they had been presented to her on the occasion of her marriage. The plaint prayed (1) for the declaration that a certain portion of the estate in the hands of the first three defendants had been ancestral property in B's hands, (2) for an account and administration, (3) that the jewels and ornaments should be delivered up. *Held* that there was a misjoinder of causes of action, having regard to the provisions of rule (b), s. 44 of the Civil Procedure Code (Act X of 1877). Part of the claim in the plaint was for a portion of A's estate, and was founded upon the plaintiff's alleged right as heir of A. The other portion of the claim in the plaint—viz., that relating to the ornaments—had no reference to A's estate, and was personal to the first plaintiff herself. *ASHADAI v. TYEB HAJI RAHMATULLA* [I. L. R., 6 Bom., 390]

18. ——— Suit for moveable and immoveable property—*Civil Procedure Code, 1882, s. 44.*—There is nothing irregular in seeking to recover moveable and immoveable property in the same suit if the cause of action is the same in respect of both. *GIVANA SAMBANDHA PANDARA SANNADHI v. KANDASAMI TAMBIRAN* I. L. R., 10 Mad., 375

19. ——— Suit for mortgage-debt with alternative prayer for sale—*Civil Procedure Code, s. 44.*—A suit for recovery of a mortgage-debt with an alternative prayer for sale of the mortgaged property, is not a suit for recovery of immoveable property within the meaning of s. 44 of

JOINDER OF CAUSES OF ACTION

—continued.

the Civil Procedure Code. A claim for arrears of rent therefore can be joined with a claim for recovery of a mortgage-debt with such an alternative prayer without leave of the Court first obtained. *GOVINDA v. MANA VIKRAMAN*, MANA VIKRAMAN v. GOVINDA [I. L. R., 14 Mad., 284]

20. ——— Administration suit—*Acts of maladministration regarding immoveable property outside jurisdiction—Civil Procedure Code (1882), s. 44, rule (a).*—In an administration action the fact that amongst other things leases of immoveable property granted by the executors to themselves are sought to be set aside on the ground that such leases are acts of maladministration do not make the action one for the recovery of immoveable property, and leave under s. 44, rule (a), is not necessary. *NISTARINI DASSI v. NUNDO LALL ROSE* [I. L. R., 26 Cal., 891; 3 C. W. N., 670]

21. ——— Misjoinder of causes of action—*Civil Procedure Code (1882), s. 44—Zamindari and appurtenant sir land sold by separate deeds—Suit for pre-emption of both zamindari and sir.*—Where a zamindari share and the sir land held with it were sold to the same vendee by two separate deeds of sale executed on the same day, it was held that a suit to pre-empt both the zamindari share and the sir land was not liable to be defeated on the ground of misjoinder of causes of action. *AMBIKA DAT v. RAM UDIT PANDH* . . . I. L. R., 17 All., 274

22. ——— *Civil Procedure Code (1882), s. 44—Suit by assignee of Mahomedan widow for part of her dower and for part of the estate of the widow's deceased husband.*—*Held* that a suit by the assignee of a Mahomedan widow for the recovery of part of the assignor's dower, and of part of the estate of the assignor's late husband, did not contravene the provisions of s. 44, rule (b), of the Code of Civil Procedure. *Ashabai v. Tyeb Haji Rahimtulla*, I. L. R., 6 Bom., 390, dissented from. *AHMAD-UD-DIN KHAN v. SIKANDAR BEGAM* [I. L. R., 18 All., 256]

JOINDER OF CHARGES.

See CRIMINAL PROCEEDINGS.

[B. L. R., Sup. Vol., 750
I. L. R., 6 Cal., 98
I. L. R., 5 Mad., 20
I. L. R., 14 Cal., 128, 353, 395
I. L. R., 9 All., 452
I. L. R., 11 Mad., 441
I. L. R., 12 Mad., 273
I. L. R., 20 Cal., 537
1 C. W. N., 35]

1. ——— Charges for distinct offences—*Separate charges and trials—Several offences under one section of Penal Code.*—In a case of several offences under one section of the Penal Code, the proper way is to try the accused (under separate charges) for each of the several distinct offences under the section. *QUEEN v. SOBRAI GOWALLAH* [20 W. R., Cr., 70]

JOINDER OF CHARGES—continued

2. ————— *Criminal Procedure Code, 1872, s 453—Practice*—S 453 of the Criminal Procedure Code simply placed a statutory limit on the number of charges which may legally form part of a single trial. There was nothing in the section, however, to prevent an accused from being

condemned. A person convicted of dacoity under s 395, Penal Code, cannot be convicted also of dishonestly receiving stolen property transferred by commission of dacoity under s 412 when there is no evidence of the commission of more than one offence. *QUEEN v SHAHABUT SHEKH* 13 W R, Cr, 42

4. ————— *Robbery on same night in several different places—Criminal Procedure Code, 1872 s 453—Separate and distinct offences of same kind*—Where persons are committed on three separate and distinct charges for three separate and distinct robberies committed on the same night in three different houses, they must be tried separately on each of the three charges. *QUEEN v IRWAZEE DOUR* 6 W R, Cr, 83

5. ————— *Theft and house breaking by night—Criminal Procedure Code, 1872, s 453*—A person accused of theft on the 1st August, and of house-breaking by night in order to steal on the 2nd August, both offences involving a stealing from the same person, was charged and tried by a Magistrate of the first class at the same time for such offences, and sentenced to rigorous imprisonment for two years for each of such offences. Held that the joinder of the charges was regular under s 453 of Act X of 1872, and the punishment was within the limits prescribed by s 311. *EMRESS v UMELA*, unreported, ordered on by STRAIGHT, J. IN THE MATTER OF DAULATIA. I L R, 3 All, 305

6. ————— *Offences of the same kind*—Where a person is charged with two separate charges under s 411, one of which is a theft and the other is a house-breaking by night, and the two charges are of the same kind, and the punishment for each is the same, the charges may be joined and tried together.

JOINDER OF CHARGES—continued

that accused persons are not prejudiced by charges being joined and the Court should at all times be anxious to lend a willing ear to any application upon their behalf for separation of charges and for separate trials upon separate charges. *EMRESS v. MURARI*, I L R, 4 All, 117, dissented from MANU MITA v FARRER

[I L R, 9 Cal, 371; 11 C. L. R., 52]

7. ————— *Theft, receiving stolen property, giving and receiving illegal gratification, and false evidence—Criminal Procedure Code, 1872 s 452—Separate charges—Distinct offences*—The accused persons were tried on 27 charges comprising the offences of theft abetment of theft and receiving stolen property, in 1872 73, similar offences in 1873 74, similar offences in 1874 75, the giving and receiving of illegal gratifications to and by public servants in 1874 75, and

sentences, and the Government appeared against its acquittal on the other hands as well as against the acquittal of the rest. Held that the trial was irregular under s 452 of the Code of Criminal Procedure, and so would be the hearing of the appeal

8. ————— *Receiving, retaining, and dealing in stolen property—Criminal Procedure Code 1872 s 453—Penal Code, ss 411, 413—Offences of different kinds—Procedure*—A person charged with two separate charges under s 411, one of which is a theft and the other is a house-breaking by night, and the two charges are of the same kind, and the punishment for each is the same, the charges may be joined and tried together.

1. The joinder of two charges in respect of which no separate charge under s 411 could be made or tried by reason of the provisions of s 453 of the Criminal Procedure Code. IN THE MATTER OF THE PETITION OF UTTOM HOONDOO. *EMRESS v. UTTOM HOONDOO* [I L R, 8 Cal, 634; 10 C. L. R., 466]

9. ————— *Rioting and hurt—Penal Code, ss 147, 323—Offence made up of several offences*—

10. ————— *Criminal Procedure Code, s 454—Commitment on two separate charges*—Where a person is charged with two separate charges under s 411, one of which is a theft and the other is a house-breaking by night, and the two charges are of the same kind, and the punishment for each is the same, the charges may be joined and tried together.

JOINDER OF CHARGES—continued.

separately. IN THE MATTER OF THE PETITION OF AMIRUDDIN. AMIRUDDIN v. FARID SARKAR

[I. L. R., 8 Calc., 481

11. ——— Abandonment of child and culpable homicide—*Penal Code, ss. 304, 317—Exposure of child.*—Where a mother abandoned her child, with the intention of wholly abandoning it and knowing that such abandonment was likely to cause its death, and the child died in consequence of the abandonment,—*Held* that she could not be convicted and punished under s. 304 and also under s. 317 of the Penal Code, but s. 304 only. *EMPRESS OF INDIA v. BANNI*. . . . I. L. R., 2 All., 349

12. ——— Cheating different persons—*Criminal Procedure Code, 1872, s. 453—Joinder of charges—Offences of the same kind committed in respect of different persons.*—*M* was accused of cheating *G* on two different occasions, and also of cheating *K* on a third occasion. The three offences were committed within one year of each other, and *M* was charged and tried at the same time for the three offences. *Held* that such joinder of charges was irregular, inasmuch as the combination of three offences of the same kind for the purpose of one trial can only be where such offences have been committed in respect of one and the same person, and not against different prosecutors, within the period of one year, as provided in the Criminal Procedure Code. *EMPRESS OF INDIA v. MURARI*

[I. L. R., 4 All., 147

13. ——— Misappropriation of money at different times—*Postmaster—Criminal Procedure Code, ss. 235, 234—Offences of the same kind committed in respect of the same person.*—Where a postmaster was accused of having, on three different occasions within a year, dishonestly misappropriated moneys paid to him by different persons for money orders,—*Held* that, the offences of which such person was accused being the dishonest misappropriations by a public servant of public moneys (for, as soon as they were paid, they ceased to be the property of the remitters), such offences were "of the same kind" within the meaning of s. 234 of the Criminal Procedure Code, and such person might therefore, under that section, be charged with and tried at one trial for all three offences. *Empress v. Murari, I. L. R., 4 All., 147, observed on. QUEEN-EMPRESS v. JUALA PRASAD*. . . . I. L. R., 7 All., 174

14. ——— Charge of three offences of the same kind—*Criminal Procedure Code (Act X of 1892), s. 234.*—An accused was charged with criminal breach of trust as a public servant in respect of three separate sums of money deposited in the savings bank under three separate accounts. The third of these charges related to the misappropriation of R195 composed of two separate sums of R150 and R45 alleged to have been misappropriated on the 16th and 25th November, respectively. These sums the accused in his statement at the trial stated he had paid over on those dates to the depositor, and produced an account book showing entries of such payments on these dates. This statement was proved to be untrue, and the accused was convicted. On an application to quash the conviction on the ground that the trial had

JOINDER OF CHARGES—continued.

been held in contravention of s. 234 of the Code of Criminal Procedure,—*Held* that the entries in the account books did not clearly show that the misappropriation of the sum of R195 took place on two dates, or consisted of two transactions, the entries having been made for the purpose of concealing the criminal breach of trust; and that, under the circumstances, the criminal breach of trust with regard to the R195 was really one offence and could be included in one charge. IN THE MATTER OF LUCHMINARAIN

[I. L. R., 14 Calc., 128

15. ——— Framing incorrect record, forgery and using forged document—*Penal Code (Act XLV of 1860), ss. 167, 466, 471—Separate trials—Offences of the same kind—Amendment of charge.*—The prisoner was committed for trial on fifty-five charges, including three charges under ss. 167, 466, and 471 of the Penal Code. At the trial before the District Judge sitting with assessors, the Court informed the prisoner that the trial would be confined to the three charges last mentioned. The prisoner was convicted on these, but the Court allowed evidence to be adduced by the prosecution on all the remaining charges, and in respect of these the prisoner was acquitted. On appeal to the High Court,—*Held* that the District Judge should have exercised the powers conferred on him by ss. 445 and 446 of the Code of Criminal Procedure, and then have proceeded to hold separate trials; that he should not have tried together the charges under ss. 167 and 466 of the Penal Code, as the offences were not of the same kind within the meaning of s. 453 of the Code of Criminal Procedure; but the convictions on these charges were upheld, as it did not appear that the prisoner had been prejudiced by the mode of trial adopted. IN THE MATTER OF THE PETITION OF SREENATH KUR. *EMPRESS v. SREENATH KUR*

[I. L. R., 8 Calc., 450 : 10 C. L. R., 421

16. ——— Offences one of which is a summons and the other a warrant case—*Summons and warrant cases—Criminal Procedure Code, ss. 247 and 253—Procedure.*—In the investigation of a complaint, which forms the subject of two distinct charges arising out of the same transaction, one of which is a summons and the other a warrant case, the procedure should be that prescribed for warrant cases. *RAJNARAIN KOONWAR v. LATA TAMOLI RAUT*. . . . I. L. R., 11 Calc., 91

17. ——— Obtaining minor for prostitution—*Criminal Procedure Code, ss. 234 and 537—Penal Code, ss. 372, 373—Misjoinder of charges—Immaterial irregularity.*—A woman, being a member of the dancing girl caste, obtained possession of a minor girl and employed her for the purpose of prostitution; she subsequently obtained in adoption another minor girl from her parents who belonged to the same caste. She and the parents of the second girl were charged together under ss. 372, 373 of the Penal Code. The charges related to both girls. *Held* that the two charges should not have been tried together, but the irregularity committed in so trying them had caused no failure of justice. *QUEEN-EMPRESS v. RAMANNA*. . . . I. L. R., 12 Mad., 273

JOINDER OF CHARGES—continued

18. ——— Rioting and criminal trespass—*Criminal Procedure Code (Act X of 1882), ss 233, 234, 537—Separate charges for distinct offences*—Five persons were charged with having committed the offence of rioting on the 6th December; four out of those persons and one F were charged with having committed the offence of criminal trespass on the 9th December. These two cases were taken up and tried together in one trial and were decided by one judgment. *Held* that the trial was illegal, and the defect was not cured by s. 537 of the Criminal Procedure Code. **IN THE MATTER OF THE PETITION OF CHANDI SINGH. QUEEN-EMPERESS v CHANDI SINGH** I. L. R., 14 Cal., 395

19. ——— Receiving stolen property and theft—*Criminal Procedure Code, 1882, ss 233, 237—Joint trial* B, M, K, and R were jointly tried for receiving stolen property under s. 411 of the Penal Code and the others for theft under s. 380, and were convicted. *Held* that the joinder of the above charges was illegal and was a ground for setting

20. ——— Offences committed by different accused against different persons at different times *Criminal Procedure Code 1882, ss 235 and 237—Joint trial*—If, in any case

accumulation to induce an undue suspicion against the accused then the propriety of combining the charges may well be questioned. The four accused, who were members of the Dharwar police force, were charged with ill-treating the complainant H,

and 3 for an offence under s. 348, Penal Code, committed against R on the 15th January 1889 (4) Accused No. 3 for an offence under s. 330, Penal

under s. 348 — period under s. between accused were committed to the Court of Session in two separate cases. The Sessions Judge tried both cases together under ss 237 and 239 of the Code of Criminal Procedure (Act X of 1882), as the same four

JOINDER OF CHARGES—continued

persons were accused in both cases and were charged with different offences committed in what was virtually one transaction, namely, a police investigation into an alleged theft. The accused were convicted of the offences charged and sentenced to various

passing and confusing the accused. *Held* also that all the several acts of violence alleged to have been committed against H during his illegal confinement could be rightly regarded as constituting a single transaction. But the act of violence said to have been committed against R at a different place could not be regarded as a part of that transaction. Nor was the wrongful confinement of I by accused Nos 1 and 3 on the 15th January a part of the transaction constituted by the hurt caused to her by accused No. 3 on the previous day. In the same way all acts of hurt caused to I during his first period of wrongful confinement would with the confinement form a part of the same transaction, but the second period of confinement, which was said to have commenced some time after the termination of the first period of confinement, would be a separate transaction. **QUEEN-EMPERESS v BAKINAPA** I. L. R., 15 Bom., 491

21. ——— Trial of separate offences and accused together *Criminal Procedure Code, ss 233, 234 and 537—Irregularity in criminal trial*—Where four accused were at one and the same trial tried for offences of murder and robbery committed in the course of one transaction and for another robbery committed two or three hours previously and at a place close to the scene of the robbery and murder, *Held* that the trial of these separate offences together, though an error or irregularity in a criminal trial, was not a ground for setting aside the whole

14. 11. 1891, 502

22. ——— Separate charges for distinct offences—*Criminal Procedure Code (Act X of 1882), ss 233, 234, 235, and 537—Using forged documents—Charges for using eleven forged documents in three acts on three separate occasions—Irregularity in criminal trial*—The accused was

JOINDER OF CHARGES—concluded.

each set of documents with the respective written statements in the three suits, and as there was nothing to show that any of the documents had been used at any other time, there was only one using in respect of each set of documents, and that there was therefore no valid ground for questioning the conviction.

QUEEN-EMPRESS v. RAGHU NATH DAS

[I. L. R., 20 Calc., 413

23. ——— Offences of same kind not within year—*Failure of justice—Application of s. 537 of the Code of Criminal Procedure—Code of Criminal Procedure (Act V of 1898), ss. 233, 234, and 537.*—Held that s. 537 of the Code of Criminal Procedure can be applied to any case in which the trial has been held on charges joined together contrary to s. 234 of that Code. *In the matter of Luchminarain, I. L. R., 14 Calc., 128; Queen-Emress v. Chandi Singh, I. L. R., 14 Calc., 395; and Raj Chunder Mozumdar v. Gour Chunder Mozumdar, I. L. R., 22 Calc., 176, overruled. IN THE MATTER OF ABDUR RAHMAN . I. L. R., 27 Calc., 839*

[4 C. W. N., 656

JOINDER OF PARTIES.

See CASES UNDER MISJOINDER.

See CASES UNDER MULTIFARIOUSNESS.

See CASES UNDER PARTIES—ADDING PARTIES TO SUITS.

See SPECIFIC RELIEF ACT, s. 9.

[I. L. R., 15 All., 384

JOINT CONTRACTORS.

See CONTRACT ACT, s. 43. 25 W. R., 419

[I. L. R., 3 Calc., 353

I. L. R., 5 Mad., 37, 133

I. L. R., 24 Bom., 77

I. L. R., 22 All., 307

JOINT CREDITORS.

See DEBTOR AND CREDITOR.

[I. L. R., 20 Mad., 461

See CASES UNDER LIMITATION ACT, 1877, ART. 179—JOINT DECREE—JOINT DECREE-HOLDERS.

See RIGHT OF SUIT—JOINT RIGHT.

[I. L. R., 7 All., 313

JOINT DEBTORS.

See CASES UNDER CONTRIBUTION, SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR.

See LIMITATION ACT, 1877, ART. 12 (1871, ART. 14) . I. L. R., 2 Calc., 98

See CASES UNDER LIMITATION ACT, 1877, ART. 179—JOINT DECREE—JOINT JUDGMENT DEBTORS.

JOINT DECREE.

See CASES UNDER CONTRIBUTION, SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR.

See CASES UNDER EXECUTION OF DECREE—JOINT DECREE, EXECUTION OF AND LIABILITY UNDER.

See LIMITATION ACT, 1877, ART. 99 (1871, s. 100) . I. L. R., 4 Calc., 529 [3 C. L. R., 480

See CASES UNDER LIMITATION ACT, 1877, ART. 179 (1859, s. 20)—JOINT DECREE.

JOINT DECREE-HOLDERS.

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[I. L. R., 1 All., 444

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See ARMS ACT, 1878, s. 19.

[I. L. R., 15 All., 129

See ENHANCEMENT OF RENT—NOTICE OF ENHANCEMENT—SERVICE OF NOTICE.

[I. L. R., 4 Calc., 592

I. L. R., 10 Calc., 433

See GUARDIAN—APPOINTMENT.

[I. L. R., 8 Calc., 856

I. L. R., 9 I. A., 27

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[I. L. R., 18 Calc., 86

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See CASES UNDER HINDU LAW—PARTI-
TION

See CASES UNDER SALE IN EXECUTION OF
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[I L R, 5 Bom., 493, 499, 499
3 Mad., 177

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[I L R, 24 Cal., 169

See BENGAL TENANCY ACT, s 189

JOINT MORTGAGORS.

See LIMITATION ACT 1877, ART 119
[I L R, 8 All., 295
I L R, 11 All., 423
I L R, 14 All., 1

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See CERTIFICATE OF ADMINISTRATION—
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[I L R, 19 Bom., 338
I L R, 17 All., 578
I L R, 23 Cal., 613
I L R, 20 Mad., 232
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See CASES UNDER CO-SHARERS

See CASES UNDER EXECUTION OF DECREE
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[I L R, 3 Bom., 151

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[1 Bom., 60
3 Mad., 208, 424
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I L R, 4 I A., 212
I L R, 3 Mad., 194
I L R, 7 All., 114

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[I L R, 11 Bom., 69, 573
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[I L R, 21 Cal., 488
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[I. L. R., 26 Calc., 869]

1. APPOINTMENT OF JUDGE.

1. ——— Consent of Governor General—*Act XXIX of 1845—Ratification.*—The consent of the Governor General in Council, as required by s. 5 of Act XXIX of 1845, to the appointment of a Joint Judge had to be given before the appointment was made. The doctrine of subsequent ratification does not apply in a criminal case. *REG. v. RAMA BIN GOPAL* . 1 Bom., 107

2. DUTY OF JUDGE.

2. ——— Trial of question of fact—*Ground for decision—Private knowledge or information—Public rumour.*—In trying a question of fact, no Judge is justified in acting principally on his own knowledge and belief, or public rumour, and without sufficient legal evidence. *MEETHUN BIBER v. BUSHLEE KHAN*
[7 W. R., P. C., 27; 11 Moore's I. A., 213]

3. ——— *Private knowledge or information.*—A Judge ought not to import his own private knowledge or opinion into a case, but ought simply to decide the issues before him and on the evidence before him. *MEHEROONISSA v. BHASHAYE MERDHA* . 2 W. R., Act X, 29

REG. v. VYANKATRAY SHRINIVAS
[7 Bom., Cr., 50]

LALLA MEWA LALL v. SHREE MAHATO
[25 W. R., 152]

JUDGE—continued.**2. DUTY OF JUDGE—concluded.**

4. ——— *Knowledge of facts—Judge as a witness.*—A Judge cannot, without giving evidence as a witness, import into a case his own knowledge of particular facts. *HURPURSHAD v. SHEO DYAL. RAM SAHOY v. SHEO DYAL. BALMOKUND v. SHEO DYAL. RAM SAHOY v. BALMOKUND* . L. R., 3 I. A., 259; 26 W. R., 55

5. ——— *Judicial notice—Judgment of proper Court.*—It is within the province of a District Judge to know, and it is his business to declare if he knows, whether a decree, produced before him, of a Court within his district was obtained in a proper Court, and is such as he can take judicial notice of. *BURSHOOLAH CHOWDRY v. HUR CHUNDER CHUND* . 16 W. R., 248

6. ——— *Opinion of assessor—Personal knowledge.*—A Sessions Judge should not import into his judgment the opinion of an assessor derived from personal knowledge and unsupported by evidence on the record. *QUEEN v. RAM CHURN KURMOKAR* . 24 W. R., Cr., 28

3. POWER OF JUDGE.

7. ——— *Power of, to delegate to assessors examination of witnesses.*—In a case of the assessors viewing the scene of the offence, the Judge cannot delegate to them his power of examining witnesses on the spot. *QUEEN v. CHUTTERDHAREE SINGH* . 5 W. R., Cr., 59

8. ——— *Pronouncing judgment out of Court—Irregularity in criminal case.*—Where a Magistrate conducted and closed the trial in the established Court-house, but could not by reason of illness pronounce judgment which he did at his private house,—*Held* that the Judge was not competent to quash the sentence on this ground and to order a new trial by the Magistrate, his power being limited to refer the case for consideration of the High Court under s. 434, Criminal Procedure Code, 1861. *GOVERNMENT v. HOLASEE SINGH*
[1 Agra, Cr., 17]

9. ——— *Holding cutcherry in Munsif's Court—Irregularity in trial of civil case—Consent of parties.*—Where a District Judge took advantage of his presence in the locality, and heard and decided a suit in the Munsif's Court, which had originally been instituted in that Court, but subsequently transferred to the Judge's Court for trial, and it appeared that the course taken was with the consent, implied, if not express, of both parties, who were represented at the hearing,—*Held* that the District Judge was justified in taking the course he had done. *MADHARY v. GOBURDHUN HULWAI*
[I. L. R., 7 Calc., 694; 9 C. L. R., 303]

10. ——— *Deciding case on evidence taken by his predecessor—Irregularity in criminal case.*—In the case of several prisoners who were tried by a Sessions Court consisting of a Judge and assessors, the latter convicted them, which finding was recorded by the Judge. The Judge, however,

JUDGE—continued.**3 POWER OF JUDGE—continued**

postponed giving judgment and left the district without recording his finding or his judgment, and the Judge's successor, after considering the evidence which had been taken before his predecessor, convicted and passed sentence on the prisoners. *Held* that the case was not void and that the trial was valid.

See TARADA BALADI v QUEEN

[I L R, 3 Mad., 113

QUEEN v RUGHOOYATH DOSS

[23 W. R., Cr., 59

11. ——— Power of Judge to deal with evidence taken by his predecessor—*Civil Procedure Code, s. 191—Hearing of suit—A*

stage of the proceedings was removed, and a new Subordinate Judge was appointed. *Held* that the trial, so far as it had gone before the first Subordinate Judge, was abortive, and, as a trial, became a nullity. *Held* also that the duty of the second Subordinate Judge, when the case was called on before him, was to fix a date for the entire hearing and trial of the

ordinary way, except that the parties would be allowed under s. 191 of the Civil Procedure Code, to prove their allegations in a different manner. *Jagram Das v Narain Lal*, I I R, 7 All., 537, referred to. *AFZAL-UN-NISSA BEGAM v AL ALI*

[I L R, 8 All., 35

12. ——— *Civil Procedure Code, 1882, s. 191—Hearing of suit—Trial—Death or removal of Judge during suit—Procedure to be followed by new Judge*—The trial of a suit before a Subordinate Judge was completed except for argument and judgment and a date was fixed for hearing argument. At this point a new Subordinate Judge was appointed, and he passed an order directing a further adjournment and fixing a particular date for disposal of the case. After some further adjournments, the Subordinate Judge delivered judgment, having heard argument on both sides upon the evidence taken by his predecessor. The District Judge having on appeal upheld the Subordinate Judge's decision, a second appeal was preferred to the High Court, and an objection was raised on the

JUDGE—continued.**3 POWER OF JUDGE—continued**

reference to the ground of appeal and under the circumstances of the case, the officer who passed the decree in the Court of first instance had jurisdiction to deal with and determine the suit in the mode, in which he did. *Jagram Das v Narain Lal*, I L R, 7 All., 537, and *Afzal-un-Nissa Begam v*

been a waiver on the part of the appellant in reference to the action of the Subordinate Judge

in the first instance and there must be a hearing of the entire case before himself; and in every case it

no trial in the legal sense of the word, and the proceedings must be set aside. *Jagram Das v Narain Lal* I I R 7 All 537 and *Afzal-un-Nissa Begam v Al Ali* I L R, 8 All 35 followed. *per MAHMOOD, J.*, that, although it is true that "a trial must be one and must be held before one Court only," the identity of the Court is not

does authorize a Judge to take up a case which has been partly heard before his predecessor, and to continue it from the point at which his predecessor left off; that where the Judge who has partly heard a case dies or is removed, the trial, so far as it has gone before him is neither abortive nor becomes

JUDGE—continued.**3. POWER OF JUDGE—concluded.**

witnesses which, though taken by his predecessor, are already upon the record; that such depositions must be dealt with as materials of evidence before the new Judge; that a judgment and decree upon such evidence are neither illegal nor absolute nullities, there being no want of jurisdiction; that when such judgment and decree are passed, the Court of first appeal is prohibited by s. 561 of the Code to order a trial *de novo*, but is bound by s. 565 of the Code to decide the appeal upon the evidence on the record; that where further issues are directed to be tried, or additional evidence is to be taken, the Court of appeal is bound to act according to the provisions of ss. 566, 568, and 569 of the Code, but cannot order a new trial; that even when there has been an irregularity on the part of the first Court in receiving or rejecting evidence, the provisions of s. 578 of the Civil Procedure Code and s. 167 of the Evidence Act prohibit the reversal of a decree and the remand of a case for new trial, unless the irregularity affects the merits of the case or the jurisdiction of the Court. *Jagram Das v. Narain Lal*, I. L. R., 7 All., 857, and *Afsal-un-nissa Begam v. Al Ali*, I. L. R., 8 All., 35, dissented from. *JADU RAI v. KANIZAK HUSAIN* . . . I. L. R., 8 All., 576

13. ————— Power of, to try case irregularly by consent of parties—Determination of case by Judge who has not taken evidence in it.—The parties to a suit which is being tried in a Court of first instance have a right to insist upon having all the advantages which attach to a public hearing of the whole case and the examination of all the witnesses in open Court before the Judge who is judicially to determine the matter in dispute between them, although they may, either expressly or impliedly, consent to the suit being determined by a Judge who has not been present throughout the trial, and to his taking into consideration evidence which has not been given before him. *SOORENDRO PERSHAD DOBEY v. NUNDUN MISSER* 21 W. R., 196

4. QUALIFICATIONS AND DISQUALIFICATIONS.

14. ————— Disqualification—Interest in case.—Judges should not try cases in which they have any personal interest. *CALCUTTA STEAM TUG CO. v. HOSSEIN IBRAHIM BIN JOHUR*

[Bourke, O. C., 273

QUEEN v. BOIDONATH SINGH . 3 W. R., Cr., 29

15. ————— Form of memorandum of appeal—Alleged bias of Judge.—*Per SUBRAMANIA AYYAR, J.*—"It is open to an appellant to set up any circumstance showing that a Judge whose decision is appealed against was disqualified from trying and deciding the case . . . When a Judge is shown . . . to stand in such a position that he might be reasonably suspected of being biased, he must be held to have been disqualified. . . . In cases where any bias can be presumed, the party is entitled to show the grounds which raise the presumption . . . But where there is no such presumption, the party must not be allowed to question the

JUDGE—continued.**4. QUALIFICATIONS AND DISQUALIFICATIONS—continued.**

impartiality of the Judge." *ZAMINDAR OF TUNI v. BENNAYYA* . . . I. L. R., 22 Mad., 155

16. ————— Interest in case—Municipal cases—Magistrate also Vice-Chairman of Municipality.—Where a Magistrate was also Vice-Chairman of a Municipal Committee, it was held he could impose fines under Bengal Act III of 1861. *ANONYMOUS* . . . 3 W. R., Cr., 33

17. ————— Interest in case—Judge as a witness.—The jailor of a district jail being accused by one of the jail clerks of falsifying his accounts and defrauding the Government, the matter was enquired into by the District Magistrate, and the jailor was, by the Magistrate's order, placed on trial before a Bench of Magistrates, consisting of the District Magistrate himself, L, the Officiating Superintendent of the Jail, and three other Honorary Magistrates. The prisoner and his pleaders were alleged to have stated before the commencement of the trial, on being questioned, that they had no objection to the composition of the Bench, but after the charges had been framed, the prisoner's counsel objected to the Bench as formed. The District Magistrate directed the Government pleader to prosecute, and both the District Magistrate and L gave evidence for the prosecution. After the case for the prosecution was closed, two formal charges were drawn up, namely, that the prisoner had debited Government with the price of more oil-seed than he actually purchased, and that he had received payment for certain oil at a higher rate than he credited to Government. The moneys, the receipt of which were the subject of the first charge, were obtained by the prisoner on the strength of certain vouchers which he had induced L to sign as correct, and L had sanctioned the sale at the rates credited to Government. Upon the prisoner's giving the names of the witnesses he intended to call in his defence, L was deputed by his brother Magistrates to examine some of them who were connected with the jail, in order "to guard against deviation," and the depositions so taken were placed on the record, "to be used by either party, though not themselves as evidence." The prisoner was convicted. On a motion to quash the conviction,—*Held* that L had a distinct and substantial interest which disqualified him from acting as Judge. *Held*, further, that although a Magistrate is not disqualified from dealing with a case judicially merely because in his character of Magistrate it may have been his duty to initiate the proceedings, yet a Magistrate ought not to act judicially in a case where there is no necessity for his doing so, and where he himself discovered the offence and initiated the prosecution, and where he is one of the principal witnesses for the prosecution. *QUEEN v. BHOLANATH SEN*

[I. L. R., 2 Calc., 23; 25 W. R., Cr., 57

18. ————— Disqualification of servant of Corporation of Calcutta to adjudicate on summons at instance of Corporation.—A, alleged to have carried on business in Calcutta without having taken out a license under Bengal Act IV

JUDGE—continued.**4. QUALIFICATIONS AND DISQUALIFICATION—continued**

of 1876, was summoned at the instance of the Corporation by B, a servant of the Corporation and also a Justice of the Peace. The case was subsequently

such an interest as might give him a bias in the

See *QUEEN v. TARINEE CHURN ROSE*

[21 W. R., Cr., 31]

19 ————— *Transfer of suits*
—Judge exercising executive functions—Bengal Civil Courts Act (I of 1871), s. 23—Act XIII of 1882, s. 25—An officer who exercises executive and judicial functions having himself dealt with a

into Court and has to be dealt with judicially
IONTEI DOMINI v. ASSAM RAILWAY AND TRADING Co
I. L. R., 10 Cal., 615

20. ————— *Expression of opinion by a Judge in a counter case—Competence to try—Grounds of transfer—Criminal Procedure Code, 1882, s. 535—A Judge is not incompetent to*

case *Queen v. Chunder Bhuya*, I. L. R., 20 Cal.,

21 ————— *Jurisdiction*
—Bias—Magistrate's jurisdiction where complainant is his private servant—Legality of conviction and

JUDGE—continued**4 QUALIFICATIONS AND DISQUALIFICATIONS—concluded**

22. ————— *Disqualification for trying case—Bias—Mamladar acting in the management of property under the orders of the Talukdari Settlement Officer—Possessory suit—Interest disqualifying Judge from trying case—No Judge can act in any matter in which he has any pecuniary interest, nor where he has any interest, though not a pecuniary one, sufficient to create a real bias—A Mamladar, who under the orders of the Talukdari Settlement officer had acted in the manage-*

23 ————— *Criminal Procedure Code (Act X of 1892), s. 535—Jurisdiction of Appellate Court interested in case to grant permission to a subordinate Court to try a case—The*

24. ————— *Qualification as witness—Judge giving evidence in case—A Judge cannot give evidence in a case merely by making a statement of fact in his judgment. If he intends the Courts to act upon his statement, he is bound to make that statement in the same manner as any other witness—ROUSSEAU v. PINTO* 7 W. R., 189

KISHORE SINGH v. GUNVESH MOOKERJEE

[9 W. R., 252]

See *IN THE MATTER OF THE PETITION OF HURRO CHUNDER PAUL*

20 W. R., Cr., 76

KALLOVAS v. GUNGA GOBIND ROY CHOWDHURY

[25 W. R., 121]

25. ————— *Competent witness in trial of case instituted by himself—A Judge is a competent witness and can give evidence in a case being tried before himself, even though he had the complaint acting as a public officer, provided that*

5. DEATH OF JUDGE BEFORE JUDGMENT

26 ————— *Re-hearing of case—When a Judge dies after hearing and deciding a case, the only record of his decision being an entry in the Court*

JUDGE—concluded.**5. DEATH OF JUDGE BEFORE JUDGMENT—concluded.**

order-book, it is not competent to any co-ordinate Court to take up and re-hear the case; but the High Court will, on the ground of want of record of reasons for the decision, reverse the order and remand the case for re-hearing. *SUKRAM v. KALA KAHAR*

[3 B. L. R., A. C., 105]

See *NORO CHUNDER BANERJEE v. ISHUR CHUNDER MITTER* 12 W. R., 254

27. ————— In a case where written opinions in a case had been sent to the Registrar by Judges who had heard the case and then died or resigned before judgment was pronounced in open Court, it was held by the Full Bench that such opinions were not judgments, but merely memoranda of the opinions and arguments of such Judges in the case. *MAHOMED AKIL v. ASADUNNISSA BIBEE. MUTTY LALL SEN GURJAL v. DESKHAIR ROY*

[B. L. R., Sup. Vol., 774; 9 W. R., 1]

JUDGE OF HIGH COURT.

See PRACTICE—CIVIL CASES—APPLICATION AFTER REFUSAL.

[I. L. R., 16 Bom., 511]

————— acting in English Department of High Court.

See TRANSFER OF CRIMINAL CASE—GENERAL CASES.

[I. L. R., 1 Calc., 219]

————— Order of—

See CASES UNDER LETTERS PATENT, HIGH COURT, CL. 15.

————— Power of—

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE.

[9 B. L. R., Ap., 6]

See BENG. REG. V OF 1812, s. 26.

[B. L. R., Sup. Vol., 655]

See CERTIFICATE OF ADMINISTRATION—CANCELMENT OR RECALL OF CERTIFICATE 5 B. L. R., Ap., 21

See GUARDIAN—APPOINTMENT.

[I. L. R., 26 Calc., 133]

See LETTERS PATENT, HIGH COURT, CL. 15 I. L. R., 20 Mad., 152

See REFERENCE TO FULL BENCH.

[B. L. R., Sup. Vol., Ap., 43
I. L. R., 25 Calc., 896]

See REVIEW—POWER TO REVIEW.

[I. L. R., 23 Calc., 339]

See CASES UNDER SUPERINTENDENCE OF HIGH COURT.

1. ————— Appointment of Judge—High Courts' Charter Act (24 & 25 Vict., c. 104), ss. 7 and 16—Interpretation of statute—"On the

JUDGE OF HIGH COURT—continued.

happening of a vacancy"—Nature of power conferred by s. 7 discussed—Evidence—Presumption of law arising from the exercise de facto of the functions of a Judge of a High Court.—The word "upon the happening of a vacancy in the office of any other Judge" in s. 7 of the 24 & 25 Vict., c. 104, mean upon the happening of a vacancy in the office of a Judge appointed to his office by Her Majesty. They are not applicable to the case of a vacancy caused by a person appointed to act as a Judge, under the provisions of the second part of the abovementioned section, ceasing to perform the duties of such office. The words above quoted further mean that the power conferred by s. 7 must be exercised within a reasonable time, that is to say, a practicable time after the happening of a vacancy. It cannot be held that the power conferred by the abovementioned section can be held in suspense for several years and then be legally exercised. Where a person had in fact for a period of more than a year been exercising all the functions of a Judge of the High Court, in virtue of an appointment purporting to be made by the Lieutenant-Governor of the North-Western Provinces and Chief Commissioner of Oudh, under sanction of Her Majesty's Secretary of State for India, it was held that though, so far as the validity of the appointment depended upon the provisions of ss. 7 and 16 of the 24 & 25 Vict., c. 104, the appointment was apparently *ultra vires*, it must nevertheless be presumed, in the absence of fuller information, that the appointment was legally made in the exercise of some power, unknown to the Court, vested in the Secretary of State for India. *QUEEN-EMPRESS v. GANGA RAM* . I. L. R., 16 ALL, 136

2. ————— 'High Courts' Charter Act (24 & 25 Vict., c. 104), ss. 7 and 16—Unreasonable delay in making appointment, Effect of.—Held in reference to the High Courts' Act, 1861 (24 & 25 Vict., c. 104), in which no time is mentioned for the appointment of an Acting Judge on the occurrence of a vacancy, that such an appointment could not be questioned on the ground of its not having been made until after a period alleged to be unreasonable. *BALWANT SINGH v. RAMKISHORE*

[I. L. R., 20 ALL, 267
L. R., 25 I. A., 54]

RAO BALWANT SINGH v. RAMKISHORE.

[2 C. W. N., 273]

3. ————— Judge sitting in ordinary original criminal jurisdiction of the High Court—Trial commenced and evidence partly gone into before one Judge—Retirement of Judge from the case under s. 555, Criminal Procedure Code, without discharging the jury—Replacement by new Judge appointed by the Chief Justice—Powers of Chief Justice over other Judges of the High Court—Jurisdiction of the new Judge to try case pending before another properly constituted Court—Discharge of jury before verdict, how effected—Concurrent trials on the same indictment and on the same facts—*Nolle prosequi*—Criminal Procedure Code, 1882, ss. 282, 283, 323, 555.—At the Criminal Sessions of the High Court the trial of the accused had commenced before *RAMPINI, J.*, and evidence

JUDGE OF HIGH COURT—concluded

ot proceed with the trial as RAMPING, J., and the jury empanelled before him had still the seisin of the case. The Advocate General preferred a *wolfe rogatus*, and the accused was discharged. *QUEEN-EMRESS v. KHAGENDRA NATH BANERJEE*
[3 C. W. N., 481]

4 ———— *Grant of application for leave to institute suit which had been refused by another Judge*—Leave to institute a suit relating to property out of the jurisdiction, as well as to property within such jurisdiction, was refused by one Judge on the 30th June 1874. The same application, in the same suit, between the same parties, relating to the same property, and founded

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Power of acting as Judge and jury.—By the constitution of the Supreme Courts in India, the Judges for the purpose of the trial of an action sit as a jury as well as Judges and the

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1. CIVIL CASES.**(a) WHAT AMOUNTS TO.**

1. ——— Record of impression or opinion on partial evidence.—Where a District Judge on appeal made an order of remand under Act VIII of 1859, s. 356, that evidence might be taken on one of the points raised, and at the same time recorded the impression which his mind had received on the other parts of the case, it was held that the opinion so recorded was not a judgment on appeal. *BULORAM BABOO v. ISSUR CHUNDER BABOO*

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2. ——— Memoranda of opinions—

Resignation or death of Judge before judgment.—Held *per totam curiam* that written opinions sent to the Registrar by Judges who had retired or died before the judgment in the case was pronounced in open Court are not judgments, but merely memoranda of the opinions and arguments of such Judges. *MAHOMED AKIL v. ASADUNNISSA BIDEE. MUTTY LALL SEN v. DESKHAR ROY*

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3. ——— Judgment written by Judge, and pronounced in Court by his successor.—A Subordinate Judge wrote out his judgment in a case which had been heard before him after he had been relieved from his office, and left the judgment to his successor to be pronounced in open Court. The judgment was pronounced in Court by the

JUDGMENT—continued.**1. CIVIL CASES—continued.**

succeeding Subordinate Judge. An objection being taken in special appeal that the judgment read out by the succeeding Subordinate Judge was not a judgment according to Act VIII of 1859,—Held that the judgment was valid. *PARBUTTY v. BHUKUN*

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4. ——— Judgment given by successor by Judge getting promotion.—Remarks on the impropriety of a Principal Sudder Ameen, who, after hearing the evidence in a suit, was promoted in the same district from the second to the first grade and refrained from giving judgment, but left it to his successor for decision. *Quere per MARKBY, J.*—Whether such decision is legal. *RADHA NATH BANERJEE v. JODOO NATH SINGH*

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5. ——— Death of plaintiff after hearing, but before judgment.—*Judgment given by Court in ignorance of plaintiff's death—Judgment and decree, Validity of—Doctrine of nunc pro tunc.*—The successful plaintiff in a suit died a few days after the hearing of the suit had been concluded and judgment reserved. Unaware of the death of the plaintiff, the Court proceeded to deliver judgment and pass a decree in favour of the deceased plaintiff. Held that nothing remaining to be done by the parties on the day when judgment was reserved, the judgment should read as from that date, and the decree was a valid decree. *CUMBER v. WANE, SMITH'S, 1 L. C., 10 Ed., 325; Ramacharya v. Anantacharya, I. L. R., 21 Bom., 314; and Surendro Keshub Roy v. Doorgasoondery Dossee, I. L. R., 19 Calc., 513, followed.* *CHETAN CHARAN DAS v. BALBHADRA DAS*

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(b) LANGUAGE OF.

6. ——— Proper language for judgment.—*Judge whose vernacular is English.*—A Judge whose vernacular language is English ought to write his decision in his own language, though to do otherwise does not affect its validity. *HURO SOONDREY DABEE v. SREEDHUR BHUTTACHARJEE*

[17 W. R., 352

(c) FORM AND CONTENTS OF JUDGMENT.

7. ——— Oral judgment.—*Oral statement of intended judgment.*—A Judge may, at the close of the hearing of a suit, state at once orally the judgment which he intends to record and deliver. *ANONYMOUS . . . 5 Mad., Ap., 8*

8. ——— Materials on which judgment should be founded.—*Civil Procedure Code, 1859, ss. 172, 183—Examination of witnesses in lower Court—Perusal of depositions.*—The meaning of s. 183, Act VIII of 1859, taken in connection with s. 172, is that the judgment is to be given upon the examination of the witnesses by the Judge himself in the Court of first instance, and not upon a perusal of depositions except those taken

JUDGMENT—continued**1 CIVIL CASES—continued**

under s 173 and the subsequent sections, which are expressly allowed to be read in evidence at the hearing; and care should be taken in the transfer

[1 DOM., A. C., 98]

9 ———— Decision on facts

—Reasons—In deciding on the facts of a case, Judges should not base their decision upon some isolated piece of evidence, but take into consideration and record their opinion on the whole evidence offered on both sides. **TILKDHARE SINGH v SAMOODRA SINGH** 8 W. R., 9

10 ———— Necessity of distinct findings

on material issues—There must be a distinct finding one way or other on all the material issues in a case. **BHAKHO MOYER BOSSIA v JOY NARAYAN BOSE** 8 W. R., 481

11 ———— Duty of Appellate Court as to judgments—Civil Procedure Code, 1859, s 339

—It is the duty of Appellate Judges to act so far in conformity with the provisions of the Code of Civil Procedure as is sufficient to show that the Court has dealt with each ground of appeal and more especially to record distinct findings on questions of fact. **AYOYMORS** 4 Mad., Ap., 56

12. ———— General assent to judgment of lower Court—Duty of Appellate Court as to judgments

—Where the Civil Judge, confirming a decree of the District Munsif, stated by way of judgment that he was of opinion that the decision of the Munsif was fair and equitable, the High Court on special appeal, sent back the case with directions to the Civil Judge to record a judgment in substantial conformity with the provisions of the Code of Civil Procedure. **KRISHNA REDDY v SRINIVASA REDDY** 4 Mad., Ap., 56 note

13 ———— Duty of Appellate Court as to judgments

—An Appellate Court should take notice of all the specific objections argued before it, and not content itself with recording a general assent to a first Court's finding. **SURENDRANATH CHOWDHRY v PROKASH CHANDER DUTT** 8 W. R., 272

14. ———— Judgment of Appellate Court—Reasons for the decision—Civil Procedure Code 1859 s 574—S 574 of the Code of Civil Procedure

—The judgment of an Appellate Court should state clearly the reasons of the conclusions therein contained. **CHANDER HANT (NOUNDRY v. SURENDRANATH CHOWDHRY** 1 W. R., 214

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15 ———— Judgment not in proper form—Civil Procedure Code, 1859, s 359—Illegal and defective judgment—A Judge's decision not being in conformity with the provision of s 359, Act VIII of 1859, was held to be illegal and defective. **REKHOBE CHAI v CHATTAPAT 1 Aggr., 73
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16. ———— Civil Procedure Code, 1859 s 359—Judgment of lower Appellate Court—Omission to record decision on material points

—The Judge of the lower Appellate Court not having recorded his judgment as required by s 359 of Act VIII of 1859, the case was sent back to the lower Court for the Judge to state the points for decision and to give his decision upon those points consistently. **TATUB KHAWAS v JAGANNATH PRASAD** 7 B. L. R., Ap., 14; 15 W. R., 131

17 ———— Judgment of Appellate Court—The judgment of an Appellate Court should clearly and fully dispose of all the points in issue between the parties by a distinct finding on each of them. **BUAGDET KHAN v PRADO BHOWA 3 W. R., 102**

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SOOKH RAJ SINGH v TUFFAZOOL HOSSEY 12 W. R., 142

18 ———— Civil Procedure Code (1859), s 574—Contents of appellate judgments

—The judgment of an Appellate Court should state clearly the reasons of the conclusions therein contained. **CHANDER HANT (NOUNDRY v. SURENDRANATH CHOWDHRY** 1 W. R., 214

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20 ———— Civil Procedure Code, 1859 s 359—The judgment of an Appellate Court should state clearly the reasons of the conclusions therein contained. **CHANDER HANT (NOUNDRY v. SURENDRANATH CHOWDHRY 1 W. R., 214**

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[4 W. R., 100]

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AJJADHAI . . . 4 Bom., A. C., 105

21. ————— The reasons for their decisions must in all cases be recorded by the Judges of the High Courts in India. KACHEKALYANA RENGAPPA KALAKKA TOLA UDIAR v. KACHIVIGAJAYA RENGAPPA KALAKKA TOLA UDIAR
[2 B. L. R., P. C., 72; 11 W. R., P. C., 33
12 Moore's I. A., 495]

22. ————— Appellate Court.
—An Appellate Court is not bound to discuss *seriatim* the arguments adduced by a lower Court in support of its judgment, but need only give its own reasons for its own judgment. INDRABATI KUNWARI v. MAHADEO CHOWDHRY . . . 1 B. L. R., S. N., 2

23. ————— Reversal of judgment of lower Court.—An Appellate Court is bound to state its reasons for reversing the decision of a lower Court. MAHADEO OJHA v. PARNESWAR PANDAY . . . 2 B. L. R., Ap., 20

MUNSOOB BIBEE v. ALI MEAH . . . 17 W. R., 358

MAHOMED SALLEH v. NUSSEEROODDEEN HOSSEIN
[21 W. R., 284]

24. ————— Civil Procedure Code, 1859, s. 359.—Held by MARKBY, J., that in saying that the "reasons" for the decision of an Appellate Court must be stated, s. 359, Act VIII of 1859, meant not the reasons for coming to any conclusion of fact, but the reasons showing upon what points of fact or law the decision runs. The bare fact that a Judge had not given the reasons for his judgment is not in itself a ground of special appeal. RAMESSUR BHUTTACHARJEE v. BHANOO
[12 W. R., 272]

25. ————— Omission to state reasons in judgment.—Civil Procedure Code (Act XIV of 1882), ss. 574, 584.—The fact that the judgment of an Appellate Court is not drawn up in the manner prescribed by s. 574 of the Civil Procedure Code is no ground for a second appeal under s. 584, unless it can be shown that the judgment has failed to determine any material issue of law. BISVANATH MAITI v. BAIDYANATH MANDUL
[I. L. R., 12 Calc., 199]

26. ————— Civil Procedure Code, 1859, s. 359.—The judgment of an Appellate Court must contain the points for determination, the decision thereupon, and the reasons therefor. It need not, under s. 359 of the Code, contain a review or setting forth of the whole of the evidence. The propriety of giving an intelligent and clear account

JUDGMENT—continued.

1. CIVIL CASES—continued.

of the evidence in the judgment laid down. NOOR MAHOMED v. ZUHOOR ALLY . . . 11 W. R., 34

27. ————— Finding of Appellate Court.—Omission to give reasons.—The finding of an Appellate Court not accompanied by reasons is not conclusive. GOPALMAO GANESH v. KISHOR KALIDAS . . . I. L. R., 9 Bom., 527

See KAMAT v. KAMAT . . . I. L. R., 8 Bom., 371

28. ————— Judgment unsupported by reasons.—Defective judgment in facts.—Grounds of second appeal.—Where no reasons are given by a lower Appellate Court for the conclusions arrived at, such conclusions cannot be accepted as legal findings of fact in second appeal. KAMAT v. KAMAT, I. L. R., 8 Bom., 368 (370), and RAGHUNATH v. Gopal Nilu Nathaji, I. L. R., 9 Bom., 452 (453), referred to. NINGAPPA v. SHIVAPPA
[I. L. R., 19 Bom., 323]

29. ————— Omission to give reasons for order holding appeal barred.—Order discharged under the circumstances, the District Judge having given no reasons for making the order. RAGHUNATH GOPAL v. NILU NATHAJI
[I. L. R., 9 Bom., 452]

30. ————— Judgment of Appellate Court.—It is not obligatory on an Appellate Court to meet categorically every one of the arguments advanced by the first Court in support of its decision. The meagreness of the judgment of a lower Appellate Court can only warrant a remand when the judgment does not show that the Court has considered the evidence. KRISHENDRO ROY CHOWDRY v. DIGUMBURE DEBIA CHOWDRAIN . . . 16 W. R., 15

See SHUMSHURODDY v. JAN MAHOMED SIDKAR
[21 W. R., 260]

31. ————— Appellate Court confirming judgment.—An Appellate Court is bound to give reasons for deciding a specific point (in this case limitation) raised before it on appeal, even if it confirm generally the order of the Court below. RADHA GOBIND KUR v. RAM KISHORE DUTT
[8 W. R., 340]

32. ————— Civil Procedure Code (Act XIV of 1882), s. 574.—Judgment not containing the reasons for decision, Validity of.—Judgment of Appellate Court affirming judgment of first Court.—Where a judgment of the lower Appellate Court does not go fully into the reasons for affirmance and even does not so much as state whether it accepts, as correct, reasons given by the first Court, it is not a proper judgment within the meaning of s. 574 of the Civil Procedure Code. It is very desirable that the Appellate Court should state, with as much fullness as the nature of the case may require, the reasons for its affirming the decision of the first Court. Radha Gobind Kur v. Ramkishore Dutt, 8 W. R., 240, referred to. HADIABATI DASI v. GOVINDA CHANDRA GHOSH
[2 C. W. N., 695]

JUDGMENT—continued

1 CIVIL CASES—continued

33. — *Omission to give reasons—Appellate Court—Civil Procedure Code, 1877, s. 574*—Where the judgment of the lower Appellate Court dismissing an appeal was merely as follows "the appeal is dismissed with costs"—the High Court set aside the decree on the ground that the Court had not complied with the provisions of s. 574 of the Civil Procedure Code. **SHIKANT DEX v HIRI DAS PAL** 11 C. L. R., 131

34. — *Affirming judgment of lower Court*—Where the decision of a case involves issues of fact, and the first Court has gone fully into the evidence and recorded its finding and decision, if the Appellate Court agrees with the conclusions of the Court below, the Appellate Court is not obliged by law to state in detail the reasons previously recited in which it concurs. **LALLA JEO GESHUR SAHAY v GOPAL LALL** 15 W. R., 54

35. — *Civil Procedure Code, 1839, s. 359—Omission to give reasons*—In a case decided on pure questions of fact no point being left undetermined, in which the Judge in appeal en-

the Court of first instance **IMRIT LALL THAKOOR v NICKSHED SHAYE** 10 W. R., 100

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36. — *Civil Procedure*

37. — *Affirmance of decision of lower Court—Decision on oral testimony*

involve the adoption by the lower Appellate Court of the first Court's view of the oral testimony **RAJOO v RAJ COOMAR SINGH** 7 W. R., 137

38. — *Omission to give*

ceeded, but such an omission may form a good ground for an application to the High Court to require the lower Appellate Court to set forth the reasons on which its judgment proceeded **GOLAM HOSSEIN v RAM DOYAL GHOSH** 12 W. R., 152

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1 CIVIL CASES—continued.

39. — *Judgment of an Appellate Court reversing the judgment of the first Court—Requisites of*—It is clearly the duty of an Appellate Court, reversing the judgment of the first Court, to state clearly and fully the grounds on which it does so and the more especially when the first Court has gone fully into the facts and the reasons for the conclusion arrived at. **RAM RANGINI CHANDA CHAUDHURANI v. CHANDRA BINDY PAL** [C. W. N., 691]

40. — *Civil Procedure Code, 1839, s. 359—Ground for remand*—It is the duty of the Appellate Court when reversing the

remanded the case to be heard in appeal de novo **KRISTO CHUNDER CHUCKERBUTTY v. RAM BROMHO CHUCKERBUTTY** 20 W. R., 403

41. — *Duty of Appellate Court—Transfer of Judge—Irregularity in recording judgment*—The Civil Judge in confirming a decision of the District Munsif did not state the reasons upon which his judgment was founded, and the High Court remitted the case in order that the Civil Judge might record a judgment in

42. — *Omission to give reasons—Death of Judge before judgment*—A

NORO CHUNDER BANERJEE v. ISHUR CHUNDER MITTER 12 W. R., 254

43. — *Judgment of Appellate Court—Omission to give reasons—Remand under ss. 566 and 587, Civil Procedure Code, 1882*—Where the lower Appellate Court omits to give reasons for its decision, the High Court will retain the case in second appeal, and either require the Judge to state his reasons or, in the event of his absence, refer the case to his successor for fresh trial **ASSANULLAH v. HAFIZ MAHOMED ALI** [I. L. R., 10 Calc., 932]

44. — *Judgment containing findings unnecessary for disposal of case—*

JUDGMENT—continued.**1. CIVIL CASES—continued.**

Appellate Court—Dismissal of suit—Findings unnecessary for disposal of case—Appeal by successful party—Civil Procedure Code, 1882, s. 293.—When a suit has been dismissed on the merits in the Court of first instance, and that decision is upheld by the District Judge on appeal, merely on the ground of non-joinder, the District Judge should not record any findings in the appellant's favour on the merits of the case; and, if he does so, such findings will, on second appeal to the High Court, be expunged from the record. *NANDA LAL RAI v. BOSOMATI LADNY* . . . **I. L. R., 11 Cal., 544**

45. — Additions to judgment after delivery.—*Adding reasons for decision.*—It is irregular to add to a judgment once delivered when the effect of the addition is to alter the grounds on which the judgment proceeded. *Settle*—A Judge may append to his judgment additional reasons, merely to show more fully the correctness of the decision at which he has arrived, though such a course is not strictly warranted by the Civil Procedure Code. *SHADDEN v. TODD, FINDLAY & Co.* [7 W. R., 286]

46. — Final disposal on settlement of issues.—*Omission to take evidence.*—Where the Judge finally disposed of the case on the day fixed for the settlement of issues without allowing the parties the opportunity to adduce evidence and fully ascertaining the facts,—*Held* that his judgment was illegal and defective. *GURZAR SHAH v. MEHTAN SINGH* . . . **2 Agra, 30**

47. — Form of judgment on appeal.—*Judgment not in conformity with law—Dismissal of appeal—Civil Procedure Code (Act XIV of 1882), ss. 551, 574.*—The lower Appellate Court, in disposing of an appeal from a decree of the Munsif, recorded the following judgment: "Suit laid at Rs 80, value of buffaloes. Appeal rejected under s. 551 of the Civil Procedure Code." *Held* that this was not a judgment in conformity with law. The dismissal of an appeal under s. 551 of the Civil Procedure Code by a Court whose decision may be the subject of an appeal does not relieve the Court from the necessity of writing a judgment which, according to the provisions of s. 574 of the Code, should show the points raised, the decision upon those points, and the reasons for deciding them. *RAMI DEKA v. BROJO NATH SAIKIA* . . . **I. L. R., 25 Cal., 97**
[1 C. W. N., 682]

48. — Applicability of provisions as to first appeals.—*Remand—Judgment of first Appellate Court—Civil Procedure Code, ss. 574, 578.*—The judgment of a lower Appellate Court, after setting forth the claim, the defence, the nature of the decree of the first Court, and the effect of the pleas in appeal, concluded, with general observations, as follows: "The point to be determined on appeal is whether or not the decision is consistent with the merits of the case. The Court, having considered the evidence on the record and the judgment of the Munsif, which is explicit enough, concurs with the lower Court. . . . The finding arrived at by the

JUDGMENT—continued.**1. CIVIL CASES—continued.**

Munsif, that the plaintiff's claim is established, is correct and consistent with the evidence. The pleas urged in appeal are therefore unavailing of consideration." *Held* that this was in law no judgment at all, inasmuch as it did not satisfy the requirements of s. 574 of the Civil Procedure Code, and that the decree of the lower Appellate Court must therefore be set aside, and the record returned to that Court for a proper adjudication, in accordance with the provisions of that section. *Madhoo Prasad v. Sarju Prasad, Weekly Notes, All., 1886, p. 171*, referred to. Observations by MAHMOOD, J., upon the distinction between the duties of the Courts of first appeal and those of the Courts of second appeal in connection with the provisions of ss. 574 and 578 of the Civil Procedure Code, and with the remand of cases for trial *de novo*. *Ram Narain v. Bhawanidin, I. L. R., 9 All., 29 note*, and *Sheoambar Singh v. Lallu Singh, I. L. R., 9 All., 30 note*, referred to. *SOHAWAN v. BABU NAND*
[I. L. R., 9 All., 26]

49. — Judgment of High Court.—*Civil Procedure Code, ss. 574, 633.*—"Substantial question of law"—*Contents of judgment—Rules made by High Court under s. 633 for recording judgments.*—The intention of the Legislature as expressed in s. 633 of the Civil Procedure Code was that the High Court might frame rules as to how its judgments should be given, whether orally or in writing, or according to any mode which might appear to it best in the interests of justice. The section does not merely give the High Court power to direct that judgment shall be recorded in a particular book or with a particular seal. Rule 9 of the rules made under s. 633 in March 1885 is therefore not *ultra vires* of the Court, and it modifies the provisions of s. 574 in their application to judgments of the High Court. With reference to the terms of Rule 9, it is not necessary, in a case where the High Court substantially adopts the whole judgment of the Court below, to go through the formality of re-stating the points at issue, the decision upon each point, and the reasons for the decision. *Per EDGE, C.J.*—Apart from Rule 9, it never was intended that s. 574 of the Code should apply to cases where the High Court, having heard the judgment of the Court below and arguments thereon, comes to the conclusion that both the judgment and the reasons which it gives are completely satisfactory, and such as the High Court itself would have given. Assuming the provisions of s. 574 to be applicable, a judgment of the High Court stating merely that the appeal must be dismissed with costs and the judgment of the first Court affirmed, and that it was unnecessary to say more than that the Court agreed with the Judge's reasons, is a substantial compliance with those provisions. The judgment of the High Court in a first appeal was as follows: "This appeal must, in my opinion, be dismissed with costs, and the judgment of the first Court affirmed; and I do not think it necessary to say more than that we agree with the Judge's reasons." The appellant applied for leave to appeal to Her Majesty in Council on the

JUDGMENT—continued

1 CIVIL CASES—continued

SUNDAR BIDI & BISHESHARNATH

[I. L. R., 8 All., 83]

50 ——— Findings of lower Court based on misconception of evidence—*Defective judgment in fact*—Ground of second appeal

[I. L. R., 20 Bom., 753]

51. ——— Findings on issues on remand—*Civil Procedure Code (1882), ss 566, 567, and 574*—Duty of Appellate Court to form its own opinion on the evidence and record reasons for findings—*Procedure*—In certifying to the High Court the findings on issues sent back on remand and found by the Court of first instance, the lower Appellate Court is, in the absence of any admission by the party against whom the issues have been found, bound to form its own opinion on the evidence and record its findings with the reasons for them. RAM CHANDRA GOVIND MANI & SONO DADASHIT DAREHOT

[I. L. R., 19 Bom., 551]

52. ——— Contents of appellate judgment—*Civil Procedure Code (1882), ss 566, 567, and 574*

further evidence to be taken and a fresh finding recorded on a question of fact, is bound to examine the correctness of the finding, and to state in his judgment the reasons for which he either accepts or rejects it. KUTUBI MAHAKLAR HAJI & KUTUBI UMMA

I. L. R., 20 Mad., 498

53 ——— Date of operation of judgment—*Adjournment for written judgment*—Death of party between hearing and judgment—*Civil Procedure Code (1882), s 231—Practice*—An appeal having been argued on the 11th November 1892 the case was adjourned for judgment, which was delivered on the 30th November 1892, and was in favour of the plaintiffs. In the meanwhile, the defendant had died. On application for execution, it was contended that the decree was null and void, as the respondent was dead when it was passed. Held that the judgment should be treated as operating as if it had been delivered on the day when the argument was closed. NAENA & ANANT

[I. L. R., 19 Bom., 807]

54 ——— Contents of judgment in appeal—*Civil Procedure Code (1882), s 574*—Duty of Appellate Court to hear appeal after remand

JUDGMENT—continued

1 CIVIL CASES—continued

findings after evidence had been taken. On the

taken to have consisted to the new findings which were against him. Held that the Judge was not absolved from hearing the appeal by reason of the absence of a memorandum of objections. KUNTI MARAKKAR HAJI & KUTUBI UMMA, I. L. R., 20 All., 496. SUBBAYYA & LAKSHMI REDDI

[I. L. R., 22 Mad., 344]

55 ——— Judgment of Small Cause Court, what should be contained therein—*Civil Procedure Code s 203—Revision—Civil Procedure Code ss 52, 62 and 617—Provisional Small Cause Court (Act 11 of 1857) s 25*—s 203 of the Code of Civil Procedure does not require the Judge of a Small Cause Court from the necessity of giving some indication in his judgment that he has understood the facts of the case in which such judgment is given. Where a judgment in a Small Cause Court suit states merely that the suit was dismissed for reasons given in the Judge's decision in another suit and the judgment in the suit so referred to was in the following words: "Claim for recovery of money lost with interest. Reply. Defen-

for a trial on the merits and the analogy of s 563 of the Code of Civil Procedure read with s 617. MANI RAHMAT & SHIVA PRASAD

[I. L. R., 13 All., 533]

(d) JUDGMENT GOVERNING OTHER CASES.

56 ——— One judgment governing several cases—*Filing judgment*—Where a judgment in one case governed other cases—*Held* that the filing of that judgment was a substantial compliance with the requirements of the law, and that the filing of a short judgment referring to the other judgment was merely formal and the delay excusable. MOHNOORWATH CHUCKERBUTTY & KISSAY MOHUN GHOSE

W. R., 1884, Mis., 9

BHUTANWATH SANDAL & HURE SOONDREE DOSSE

W. R., 1884, Mis., 28

(e) CONSTRUCTION OF JUDGMENT

57. ——— Inconsistency in portions of judgment—*Ambiguity*—In construing a judgment if a difficulty is found in reconciling the conclusion ultimately arrived at with the previous part, such part must be rejected. BIKUNT CHUNDER CHUCKERBUTTY & DHANUPUT SINGH

19 W. R., 104

58 ——— Matter omitted in conclusion arrived at—*Former decisions of same*

JUDGMENT—continued.**1. CIVIL CASES—concluded.**

Judge as guides.—Where the final sentence in a judgment of the High Court made no mention of a matter specified in the previous words, and the District Judge had the option of taking the latter to throw light on the former, or the former to be controlled by the latter, he was held to be entitled to follow the effect of previous judgments delivered by the same Judge of the High Court. *TARA CHAND BISWAS v. RAM JEEBUN MOOSTAFEE* . . . **22 W. R., 202**

(f) RIGHT TO COPIES OF.

59. ——— **Right of parties to copy of judgment—Translation.**—Parties to a suit are entitled to receive copies of the original judgment, not merely a translation. *VARJIVAN RANGJI v. ALI DAJI* . . . **1 Bom., 165**

60. ——— **Copies of judgments of Courts of Small Causes.**—Judges of Courts of Small Causes were bound to give copies of their judgments to parties requiring them. *IBRAHIM FATTE ALI v. CHANDRA BHAI VALAD BARUJI* **[7 Bom., A. C., 130]**

61. ——— **Right of strangers to copy of judgment.**—Strangers to a suit may obtain as of course copies of judgments, decrees, or orders at any time after they have been passed or made. See Circular Order, 2nd June 1875. *IN RE BAMA CHURN GHOSAL* . . . **2 C. L. R., 553**

62. ——— **Copies of, Delay in furnishing—Civil Procedure Code, s. 198—Resolution of High Court, 6th July 1872.**—The plaintiff applied for the admission of a special appeal, and his application was refused on the ground that the time for the admission of the appeal had expired. It appeared that he had applied for a copy of the judgment and decree, but had been refused, as he had not put in a sufficient quantity of blank papers for copies. On appeal to the High Court, *Held* the judicial officer not justified in delaying the giving of copies till blank papers were put in. Such copies, by s. 198 of Act VIII of 1859 and a resolution of the Court of 6th July 1872, are to be issued on production of the necessary stamps. *NILMONY SINGH v. CHINIBAS MAHANTI*

[12 B. L. R., Ap., 8: 20 W. R., 405]

2. CRIMINAL CASES.

63. ——— **Illegal judgment—Judgment pronounced by successor—Re-trial.**—Until the finding is recorded, the trial is incomplete. If before the finding is recorded the presiding officer of a Court is removed, the successor cannot pass judgment upon consideration of the evidence recorded by the predecessor. *ANONYMOUS* . . . **4 Mad., Ap., 43**

64. ——— **Necessity of findings on each charge—Criminal Court—Sessions Judge.**—A Sessions Judge should record findings, whether of conviction or acquittal, on all the charges under which prisoners are committed for trial. *QUEEN v. NAHOMED ALI* . . . **13 W. R., Cr., 50**

JUDGMENT—continued.**2. CRIMINAL CASES—continued.**

65. ——— **To enter up findings on every head of charge is not only not illegal, but the most convenient course.** *ANONYMOUS* **[8 Mad., Ap., 47]**

66. ——— **Reasons for decision—Criminal Appellate Court—Judgment in affirming conviction.**—Although as a general rule it is not incumbent on an Appellate Court when confirming a decision to set forth its reasons in full, yet in the circumstances of a case anything peculiar should be noticed. *REG. v. MORODA BRASKARJI* . . . **8 Bom., Cr., 101**

67. ——— **Sessions Judges.**—Sessions Judges should record their reasons for confirming, reversing, or modifying the sentences or orders of the Magistrates. *ANONYMOUS* **[5 Mad., Ap., 12]**

68. ——— **Omission to give reasons—Criminal Procedure Code (Act X of 1882), ss. 367-424.**—A Sessions Judge, after hearing an appeal, gave the following judgment: "It is urged that the evidence is quite untrustworthy, and that the decision should be reversed. The depositions have been gone through, and commented on at considerable length. The Court finds no ground for interference. The appeal is dismissed." *Held* that this was not a sufficient compliance with ss. 367 and 424 of Act X of 1882, and that the case should be re-tried. *KAMRUDDIN DAI v. SONATUN MANDAL* **[I. L. R., 11 Calc., 449]**

69. ——— **Judgment not in proper form—Form and contents of judgment—Criminal appeal to Magistrate—Criminal Procedure Code, 1882, ss. 367, 424.**—A Magistrate, hearing an appeal from the Deputy Magistrate, gave the following judgment: "I see no reason to distrust the finding of the lower Court. The sentence passed, however, appears harsh. I reduce the term of imprisonment to fifteen days. The fines and terms of imprisonment in default will stand." *Held*, following the decision in *Kamruddin Dai v. Sonatun Mandal*, **I. L. R., 11 Calc., 449**, that it was not a judgment within the meaning of ss. 367 and 424 of the Criminal Procedure Code. *IN THE MATTER OF THE PETITION OF RAM DAS MAGHI* . . . **I. L. R., 13 Calc., 110**

70. ——— **Criminal Procedure Code, 1882, ss. 367 and 424—Judgment, Contents of—Omission to give reasons.**—A District Magistrate, in disposing of an appeal, recorded the following judgment: "The affray was a faction fight between members of the two parties into which the society of Dhuushi seems to be split up. There is no good ground for doubting the justice of the Magistrate's finding that the two appellants took part in the affray, and that the party to which they belonged were the aggressors. The appeal is dismissed, and the conviction and sentence are confirmed." *Held* that this was not a judgment in accordance with ss. 367 and 424 of the Code of Criminal Procedure (Act X of 1882). *IN RE SHIVAPPA BIN SHIDLINGAPPA* . . . **I. L. R., 15 Bom., 11**

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1. The first step is to identify the key elements of the problem. This involves understanding the context, the data available, and the specific question being asked.

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JUDGMENT IN REM—concluded

under Act IV of 1811, and a suit brought against him on behalf of another infant son, B, failed on proof of the legitimacy of A. A third son, C, now claimed

it have been had the issues in the two suits been referred to the same. *Quere*—Does there exist in India (exclusive of the particular jurisdictions which are exercised by the British Courts in matters of probate and the like, and which in the case of war might be exercised in matters of prize) any Court capable of exercising a jurisdiction over a *res* situated in India?

[11 B. L. R., 241 17 W. R., 104
11 Moores L. A., 307]

6. Decree declaring deed to be forged—*See* *Indur*—The plaintiff sued to set aside a decree which had been obtained against a co-defendant in a probate suit. The decree which declared the plaintiff to be a forger was in a suit to which the plaintiff was no party. *Held* the decree did not operate as a judgment in rem.

[3 Ind. Jur., N. S., 120; 7 W. R., 347
(B) 11 R., Sup. Vol., 672]

See *Lata Hazare v. Bhogabhai Tenary*
[6 B. L. R., 69 14 W. R., 201]

6. Decision on question of adoption—The plaintiff's decision in *H. L. R., Sup. Vol., 662* 2 Ind. Jur., N. S., 229 7 W. R., 338 merely laid down that a decision in a suit *inter alia* relating to a question of adoption was not a judgment in rem.

[3 Ind. Jur., N. S., 245; 8 W. R., 64
11 Moores L. A. & Under 2194]

JUDGMENT-DEBT.

See CONTRACT ACT, s. 25

[11 R., 3 AN, 781
11 R., 14 Bom, 380]

JUDGMENT-DEBTOR.

See CASES UNDER ARREST—CIVIL ARREST.

See CASES UNDER ATTACHMENT—ATTACHMENT OF TENSON

See BENGAL TENANCY ACT, s. 174

[11 R., N., 15 Calo, 483

See INVESTMENT

[11 R., 13 Mad., 141

JUDGMENT IN REM.

See CASES UNDER ESTOPPEL—ESTOPPEL BY JUDGMENT.

See EVIDENCE—CIVIL CASES—DECRIES, JUDGMENTS, AND PROCEEDINGS IN REM.

1. Decision as to status of particular person or family—*Assignment* interest in property.

1. Decision as to status of particular person or family—*Assignment* interest in property.

2. Rule making judgments conclusive—*Exceptions to rule*—The rule which makes a judgment conclusive against parties and those who claim under them is subject to certain exceptions.

Laxma v. Avarala Narayana 3 Ind., 276
subject examined and commenced upon *Laxma* authentic in English and Roman law upon the plaintiff in rem declared and decreed from and the decree in rem. *See* Smith's definition of a judgment as to warrant the application of the doctrine concerning as to warrant the application of the doctrine.

right from *J. L.*—*Held* that the judgment in the former suit was not admissible in evidence on the

by the finding upon any issue raised in the suit, whether relating to status, property, or any other matter *Naraya Laxma* *See* *Vol. 662* [B] 11 R., Sup. Vol., 662 2 Ind. Jur., N. S., 229 7 W. R., 338
4. Decision as to disputed succession—In a case of disputed succession to a *res*, *see* one son of the *Haja*, deceased, was put into possession

JUDGMENT-DEBTOR—concluded.

Representative of—

See CASES UNDER CIVIL PROCEDURE CODE, s. 241—PAINTERS TO SUITS.

See CASES UNDER REPRESENTATIVE OF DECEASED PERSON.

JUDICIAL ACT.

See CASES UNDER JUDICIAL OFFICERS, LIABILITY OF.

JUDICIAL COMMISSIONER.

Power of—False evidence—Criminal Procedure Code (Act XXV of 1861), s. 172.—A Judicial Commissioner has no power, under s. 172 of the Code of Criminal Procedure, to commit a witness for a false deposition given before the Assistant Commissioner. QUEEN v. MATI KHOWA [3 B. L. R., A. Cr., 36; 12 W. R., Cr., 31]

JUDICIAL COMMISSIONER, ASSAM.

Jurisdiction of—Act XL of 1858—Succession Act (X of 1866), s. 235.—Assam does not come within the definition of a province, but of a district, for the purposes of Act X of 1865; and the jurisdiction in granting probates and letters of administration under s. 235 of that Act is vested not in the Deputy Commissioner, but in the Judicial Commissioner. The Court of the Judicial Commissioner, not of the Deputy Commissioner, is the principal Court of original civil jurisdiction in Assam, and the Judicial Commissioner is the officer to whom, under Act XL of 1858, the charge of minors and their property is committed. KRISTO SURMA ADIKARIE v. BASOODER GOSWAMI [12 W. R., 424]

JUDICIAL COMMISSIONER, PUNJAB.

—Circular orders passed by—

See INDIAN COUNCILS ACT. [12 B. L. R., P. C., 167]

JUDICIAL DECISIONS.

See HINDU LAW—CUSTOM—GENERALLY. [1. L. R., 16 ALL, 379]

JUDICIAL NOTICE.

See CIVIL PROCEDURE CODE, 1882, s. 87. [4 B. L. R., O. C., 51]

See EVIDENCE ACT (I OF 1872), s. 57. [1. L. R., 14 Cal., 176]

See RELIGION, OFFENCES RELATING TO. [1. L. R., 7 ALL, 461]

Justice of the Peace—Case sent up to High Court.—Where K had tried a case and whether he had done so in his capacity of a Magistrate or of a Justice of the Peace.—Smtle—The High Court was bound to take judicial notice that K was a Justice of the Peace for Bengal. QUEEN v. NABADWIP GOSWAMI [1 B. L. R., O. Cr., 15; 16 W. R., Cr., 71 note]

JUDGMENT-DEBTOR—continued.

See CASES UNDER INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE.

See LIMITATION ACT, 1877, ART. 11.

[1. L. R., 1 Mad., 391]

1. L. R., 11 Bom., 114

1. L. R., 16 Cal., 674

1. L. R., 17 Bom., 629

1. L. R., 22 Bom., 876

See RIGHT OF SUIT—EXECUTION OF DECREE. 1. L. R., 16 Cal., 437, 674

[1. L. R., 23 Mad., 196]

1. L. R., 10 ALL, 479

Death of—

See CIVIL PROCEDURE CODE, s. 108. [1. L. R., 21 ALL, 274]

See CIVIL PROCEDURE CODE, s. 241—PARTIES TO SUITS.

[1. L. R., 10 ALL, 479]

1. L. R., 16 ALL, 286

1. L. R., 24 Cal., 62

1. L. R., 19 ALL, 332

See CIVIL PROCEDURE CODE, s. 241—QUESTIONS IN EXECUTION OF DECREE.

[1. L. R., 17 ALL, 431]

See CASES UNDER EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES.

See LIMITATION ACT, ART. 179—NATURE OF APPLICATION—IRREGULAR AND DEFECTIVE APPLICATIONS.

[1. L. R., 19 ALL, 387]

See CASES UNDER REPRESENTATIVE OF DECEASED PERSON.

See CASES UNDER SALE IN EXECUTION OF DECREE—INVALID SALES—DEATH OF JUDGMENT-DEBTOR BEFORE SALE.

Discharge of—

See ATTACHMENT—ATTACHMENT OF PERSON. [5 N. W., 220]

1. L. R., 6 Mad., 170

1. L. R., 8 Mad., 503

1. L. R., 12 Bom., 46

1. L. R., 11 Cal., 527

1. L. R., 20 Cal., 874

See CIVIL PROCEDURE CODE, 1882, s. 341. [1. L. R., 9 Bom., 181]

1. L. R., 8 Mad., 21

See CASES UNDER INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE.

See CASES UNDER SUBSISTENCE-MONEY.

Insanity of—

See SALE IN EXECUTION OF DECREE—SETTLING ASSETS—IRREGULARITY. [1. L. R., 19 Mad., 219]

JUDICIAL OFFICERS, LIABILITY OF

6 ————— Liability of public officers. ————— continued.

and of officers acting under their orders. An officer commanding, in consequence, acting *bona fide* in the discharge of his public duty, and under the belief that a person was dangerous by reason of insanity, caused him to be arrested, in order that he might be examined by medical officers, and caused him to be detained in his house, for that purpose, he not being a dangerous lunatic. The medical officers, while reporting him sane recommended that he should be placed under the observation of the civil surgeon of the station, for which purpose the same officer caused his further detention. The commanding officer, who, under Act XVII of 1854, s. 11, had control and direction of the police in the cantonment, did not proceed, or intend to proceed under s. 3 of Act XXXVI of 1858. *Held* that, although his belief might have justified the commanding officer, if he had proceeded under the provisions last mentioned, yet he not having done so, and not having any legal authority for what he had done, was not protected from liability in respect of the above acts. *SICCAH v. HANOTHOV*

[L. L. R., 9 Cal., 341] 13 C. L. R., 185

0 ————— Liability of Municipal Commissioners sitting as Magistrate under

Heng lei III of 1854 - A Municipal Commissioner invested with the powers of a Magistrate under Bengal Act III of 1854 is protected by Act VIII of 1850 in respect of every act done by him in such capacity

7 ————— Customs at Madras—Importation of fine without jurisdiction—Bond filed before—The defendant, who

[13 W. R., 340]

PRYIAN CHITHAMBARAN . I. L. R., 1 Mad., 89

discharged those duties erroneously, irregularly, or

JUDICIAL OFFICER.

See *REGAL TEXAKOT ACT*, s. 153

[1 L. R., 15 Cal., 397]

See *FALSA FIDUSCA—GENERALITY*.

[1 L. R., 27 Cal., 620]

Charge by, for executing commission.

Transfer of—

See *CASES UNDER MAGISTRATE, JUDICIAL OFFICE OF—THASAR OF MAGISTRATE*

DURING TRIAL.

JUDICIAL OFFICERS, LIABILITY OF—

OF—

not be against a Judge for acting judicially, but

means of knowing, of the defect of jurisdiction, and

it lies upon the plaintiff in every such case to prove

that fact. *CALDER v. HARRIS*

[3 MOORE'S L. A., 203]

2. ————— Act XVIII of 1850—Person

acting within limits of his jurisdiction—Bond filed

Under the provisions of s. 1 of Act VIII of

1850, no person acting judicially is liable for an act

done or ordered to be done by him in the discharge of

his judicial duty within the limits of his jurisdiction

In such a case the question whether he acted in good

fault does not arise. *MEHRAH v. LAKSHI HERRAI*

[L. L. R., 1 AP., 280]

1850 VENKAT SHINIVAS v. ARUNTHROV

[3 BOM., A. C., 47]

Criminal Procedure Code 1861, ss. 68, 212—Liability of Magistrate—*Held* that neither Act XVIII of 1850 nor ss. 68 and 212 of the Code of Criminal Procedure, 1861, protected a Magistrate who had failed to act reasonably, carefully, and circumspcctly in the discharge of his duties. *VIRAYAK DIVAKAR v. BAI*

3 BOM., A. C., 86

JUDICIAL OFFICERS, LIABILITY OF

—continued.

even illegally, or without believing in good faith that he had jurisdiction to do the act complained of. Where the act done or ordered to be done in the discharge of judicial duties is without the limits of the officer's jurisdiction, he is protected if, at the time of doing or ordering it, he in good faith believed himself to have jurisdiction to do or order it. The word "jurisdiction" is used in Act XVIII of 1850 in the sense in which it was used by the Privy Council in *Culder v. Hall et al.*, 2 Moore's L. J., 293. It means authority or power to act in a matter, and not authority or power to do an act in a particular manner or form. A judicial officer who in the discharge of his judicial duties issues a warrant which he has authority to issue, though the particular form or manner in which he issues it is contrary to law, acts within, and not without, the limits of his jurisdiction in this sense. Where a Magistrate of the first class, having sentenced an accused person to three years' rigorous imprisonment and Rs. 100 fine under ss. 379 and 411 of the Penal Code, and having issued a warrant, purporting to act under s. 386 of the Criminal Procedure Code, for the levy of the fine by distress and sale of cattle belonging to the accused, sold such cattle before the date fixed for the sale, and in contravention of form 37, sch. V and s. 554 of the Code, and form D in ch. V of the circular orders of the High Court,—*Held* that he was acting in the discharge of his judicial duty within his jurisdiction as a Magistrate of the first class; that under such circumstances it was impossible that he did not in good faith believe himself to have jurisdiction to sell the property in the manner he did; and that the fact that he acted with gross and culpable irregularity did not deprive him of the protection afforded by Act XVIII of 1850. *TEXEN v. RAM LALL*. I. L. R., 12 All., 115

9. *Liability of Magistrate—Conciction of servant for misbehaviour—Bom. Reg. I of 1814—Act II of 1839.—Held* that an action of trespass for false imprisonment lay against a Magistrate who proceeded before him under a Bombay Rule, Ordinance, and Regulation I of 1814, for misbehaviour as a domestic servant, there being no information or evidence on oath of the offence charged, as required by the Regulation, as well as by Act II of 1839, and the plaintiff not being a domestic servant; or any servant within the scope of the Regulation; and when called upon to plead, having stated that he left the service because there were wages due to him from his employer, upon which statement he was convicted, without any proper investigation into the truth of it. *Held* also that the Magistrate, who failed to act reasonably, carefully, and circumspectly, cannot be said to have in good faith believed himself to have jurisdiction within the meaning of Act XVIII of 1850, and consequently that he cannot claim the protection of that Act in an action brought against him in a Civil Court. *VITHOBA MALHARI v. CONFIELD*. 3 Bom., Ap., 1

10. *Political Agent in his executive capacity.—In a suit brought in the High Court, Bombay, by the Hindu*

JUDICIAL OFFICERS, LIABILITY OF

—continued.

inhabitants of Mahalingpore, a village in the territories of the Chief of Madhool, against the Political Agent at the Court of Madhool, for damages for injuries done to them by certain orders made by him which affected their caste, the plaintiff stated that the defendant, at the time the orders were made, exercised exclusive civil jurisdiction throughout the territories of the Chief of Madhool, and that the Court of the defendant was a Court subject to the superintendence of the High Court at Bombay; and that the orders complained of were made by him as Political Agent and in his executive capacity. *Held* that there was no cause of action, whether the acts were done by the defendant as Political Agent or in his judicial and magisterial capacity. *INHABITANTS OF MAHALINGPORE v. ANDERSON*. 7 B. L. R., 452 note

11. *Refusing bail, Liability of Magistrate to action for.—The refusing or accepting of bail is a judicial, not merely a ministerial, duty, and a mistake in the performance of that duty by a Magistrate without malice will not be sufficient to sustain an action.* *PARAKRISHAN NARAYAN PANIULU v. STUART*. 2 Mad., 393

12. *Liability of Magistrate—Delay in trying prisoners—Power to adjourn case.—A Deputy Magistrate, who without reason causes delay in proceeding with the trial of persons whom he keeps in jail, is liable, notwithstanding Act XVIII of 1850, to an action for damages if the prisoners are eventually acquitted. By s. 22 of the Code of Criminal Procedure, a Magistrate may, by a written order from time to time, adjourn an enquiry for a period not exceeding fifteen days.* *QUEEN v. SHAMON*. 11 W. R., Cr., 19

13. *Illegal arrest when acting bona fide—Liability of public officer.—Where the defendant, a commanding officer of a regiment, had unlawfully caused the plaintiff, a contractor, to be arrested and kept in confinement on the reasonable suspicion of fraud entertained against him, believing himself to be lawfully possessed of the authority to do so, and did not act in malice or conscious violation of the law, nor for the furtherance of any unlawful purpose, but failed to establish the fraud imputed,—Held* that the plaintiff under the circumstances was entitled to substantial damages. *PATTON v. HUREE RAM*. 3 Agra, 409

14. *Improper procedure of Magistrate.—The Magistrate of a district issued an order under s. 308 of the Criminal Procedure Code, 1861, calling on the petitioner to remove a building, on the ground that it was an unlawful obstruction in a highway. A jury of five persons thought without any instructions and differing in their views as to the proper performance of the duties, found, after the time for their report had expired, that the building was not on the high road. Five days after, the Magistrate issued another order requiring the petitioner to pull down the house within 15 days, as the report of the jurors had been made within the time prescribed. The petitioner showed cause under s. 313, but without effect.*

Order made by

CASES.

JUDICIAL PROCEEDING—Article I.
S. CARRUTHER FAIRBANKS

JUDICIAL PROCEEDING—**CASE NO.**
S. C. CASE NO. 10000 FARM BUREAU—GE.
S. C. CASE NO. 1
See RECOMPENSATION SCHOOLS ACT, § 8.
[L. L. R., 14 Dom., 381]
... POWER

See CASES UNDER PARTIAL
35-381 (C.A. 1)
See REGENERATORY SCHOOLS ACT, 1980.
(I. L. R., 14 Bom., 381
See SECTION FOR PROTECTION - POWER
(I. L. R., 10 Mad., 18
TO CRIMINAL SANCTIONS.
(I. L. R., 27 Calc., 152)

Revision of -
See CASE UNDER PETITION - CRIMINAL
CASE.
See CASE UNDER THE JURISDICTION OF
HIGH COURT.

JUDICIAL SEPARATION.

1. L. R., 4 Calc., 280
 2. L. R., 22 Calc., 544
 3. L. R., 5 Calc., 35
 4. L. R., 3

I. L. R., 5 C. 11
 S. A. B. L. R., 318
 S. A. B. L. R., 17 Bom., 140
 I. L. R., 17 Bom., 140
 I. L. R., 17 Bom., 140

JUDICIAL SUPERINTENDENT OF RAILWAYS.

JUDICIAL SUPERINTENDENCE OF RAILWAYS.

Dominions of Nizam of Hyderabad.—*Power of Court of Judicial Superintendence of Railways to commit to High Court—Letters Patent, 1865, cl. 24—European British subjects.*

The provisions of the Code of Criminal Procedure (X of 1852) apply to the Court of the Judicial Superintendent of Railways in His Highness the Nizam's Dominions. *Held* that a European British subject, being a public servant within the meaning of s. 197 of the Criminal Procedure Code (X of 1852), was committed for trial to the High Court of Bombay by the Judicial Superintendent of Railways in His Highness the Nizam's Dominions, without any previous sanction having been obtained as required by that section. *Held* that the proceedings were illegal and without jurisdiction, and that a sanction subsequently obtained was of no effect; but held also that the provisions of s. 532 of the Criminal Procedure Code applied, and that the Judge presiding at the criminal sessions of the High Court had, in his discretion, to accept the commitment, and to proceed with the trial of the Judicial Superintendent of Railways in His Highness the Nizam's Dominions in His Highness the Nizam's Dominions is subordinate to the High Court of Bombay in all criminal matters relating to European British subjects. *Per BAYLEY, J.*—The Court of the Judicial Superintendent of Railways in His Highness the Nizam's Dominions is not subject to the superintendence of the High Court of Bombay within the meaning of cl. 24 of the Letters Patent, 1865 and a prisoner committed by the former Court to

JUDICIAL PROCEEDING.
BOMBAY DISTRICT
L. L. I.

See BOMBAY DISTRICT MUNICIPAL ACT.
1873, s. 84. I. L. R., 17 Bom., 731

See CIVIL PROCEDURE CODES, s. 176
[I. L. R., 3 Cal., 742]
See CRIMINAL PROCEDURE CODES, s. 187
(1872, s. 135) I. L. R., 3 Cal., 742
PROCEDURE CODES, s. 187
[10 Bom., 742]
Cr. 1

See CRIMINAL PROCEDURE CODES, s. 187.
(1872, s. 135) I. L. R., 30 Bom., 73
See CRIMINAL PROCEDURE CODES, s. 187.
18 W. R., Cr., 15
I. L. R., 13 Cal., 121, 766
I. L. R., 20 Mad., 283
I. L. R., 14 All., 354
I. L. R., 27 Cal., 452

JURISDICTION—continued.

See CASES UNDER LETTERS PATENT, CL. 12.

See CASES UNDER MAGISTRATE—JURISDICTION OF.

See CASES UNDER MUNSIPI, JURISDICTION OF.

See CASES UNDER SMALL CAUSE COURT, MOFUSSIL—JURISDICTION.

See CASES UNDER SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION.

See CASES UNDER PROBATE—JURISDICTION IN PROBATE CASES.

See CASES UNDER SUBORDINATE JUDGE, JURISDICTION OF.

See CASES UNDER VALUATION OF SUIT—APPEALS.

See CASES UNDER VALUATION OF SUIT—SUILS.

Illegal exercise of, or failure to exercise—

See CERTIFICATE OF ADMINISTRATION—CERTIFICATE UNDER BOMBAY REGULATION VIII OF 1827.

[I. L. R., 16 Bom., 708]

See CASES UNDER SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.

Question of—

See CASES UNDER APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—JURISDICTION.

Transfer or re-arrangement of, in British Territory.

See CESSION OF BRITISH TERRITORY IN INDIA . . . I. L. R., 1 Bom., 367 [I. L. R., 2 All., 1]

Want of—

See APPELLATE COURT—EXERCISE OF POWERS IN VARIOUS CASES.

[I. L. R., 13 All., 575]

See SALE IN EXECUTION OF DECREE—INVALID SALES—WANT OF JURISDICTION.

1. QUESTION OF JURISDICTION.

(a) GENERALLY.

1. ——— Duty of Court to show its jurisdiction on its proceedings.—The High Court pointed out the necessity of a Court showing its jurisdiction and competency on the face of all its proceedings. *QUEEN v. BIRPO DOSS* [8 W. R., Cr., 45]

2. ——— Jurisdiction on what dependent.—Nature of claim.—Nature of defence.—The jurisdiction of a Court of justice as to a cause of action depends on the nature of the claim put forward by the plaintiff and the matter involved in it, not on what the defendant may assert by way of defence. *CHUNDER KOOMAR MUNDUL v. BAKUR ALI KHAN* . . . 9 W. R., 588

JURISDICTION—continued.

1. QUESTION OF JURISDICTION—continued.

DALGLEISH v. JEEBUN MAHTO . . . 25 W. R., 130

WATSON v. HEDGER . . . W. R., 1864, Act X, 25

NOBIN CHUNDER ROY CHOWDHURY v. BHOWANEE PERSHAD DOSS . . . W. R., 1864, Act X, 52

3. ——— Questions of jurisdiction how governed.—Statements in plaint and defence.—Valuation of suit.—Questions of jurisdiction, whether with reference to the nature of the suit or with reference to the pecuniary limits of the claim, are matters to be governed by the statements contained in the plaint in the cause. The valuation of the claim as preferred by the plaintiff, and not as set up by the plea in defence, would govern the action, not only for the purposes of the original Court, but also for the purposes of appeal, and indeed throughout the litigation. *JAG LAL v. HAR NABAIN SINGH* [I. L. R., 10 All., 524]

4. ——— Objection to jurisdiction.—Evidence of jurisdiction.—Military Court of Requests Act (XI of 1841), s. 8.—Where the plaintiff alleges the defendant to be amenable to the jurisdiction of the Court, and the defendant denies its jurisdiction,—Held that the parties should be allowed to go into evidence to support their allegations, and the Court ought not to have rejected the plaintiff's evidence recording its reasons for the same, or taking evidence on the point, under s. 8, Act XI of 1841. *ANOOB CHUND v. SHUMBOO MULL* . . . 1 Agra, 222

5. ——— Appeal on merits of case.—In a suit for confirmation of possession of an estate under a bill of sale, by setting aside a bond in favour of a third party, and a sale in execution of a decree of the Small Cause Court upon the bond, the first Court found that plaintiff's bill of sale was fraudulent, and that he was not in possession. On appeal the Judge, on an objection taken for the first time in his Court, held that the Small Cause Court had no jurisdiction to try a suit on a bond in which plaintiff's case, gave him a decree. Held that the Judge ought to have tried first, not the defendant's case, but the plaintiff's, who was bound to prove his possession and the genuineness of his bill of sale; until then the question of jurisdiction did not arise. *RASH BEHABEE ROY v. EZUD BUKSH* [11 W. R., 27]

6. ——— Admission or rejection of jurisdiction by Court.—Judicial investigation.—A judicial investigation of allegations and facts sufficient to guide the Court should precede admission or rejection of jurisdiction. *NUS BEEBEE v. WATSON & Co.* . . . 3 W. R.,

See HUREE PERSAD MALEE v. KOONJO BE SHABA . . . Marsh., 99:1 Hay

and ISHAN CHUNDER ROY v. TARRUCK CH BANERJEE . . . 18 W. R.

JURISDICTION—continued.**1. QUESTION OF JURISDICTION—continued.**

trial by the Assistant Judge.—*Held*, on objection taken on appeal, that the District Judge ought to have considered the objection, as involving a question of jurisdiction, though raised before him for the first time during the hearing, and not taken in the memorandum of appeal against the decree of the Assistant Judge. *MOHILAL RAMDAS v. JAMNADAS JAVERDAS* . . . 2 Bom., 42; 2d Ed., 40

31. ————— *Objection raised for first time on appeal.*—A sued B in a Court which had no jurisdiction to entertain the claim. The suit was heard and determined in favour of B by the Munsif, whose decree was affirmed on appeal by the District Court. *Held* that A had a right in special appeal to take the objection that the Courts below had proceeded without jurisdiction. *BHAI TRIMBAKJI v. TOMU YALAB KUTUR*

[2 Bom., 200; 2d Ed., 192]

22. ————— *Objection raised on special appeal.*—Where an objection to the jurisdiction of the Court of first instance was taken for the first time in special appeal, being based on an illegal withdrawal of the suit by the District Judge from the Sudder Ameen to the Assistant Judge's file, it was held that the High Court was not bound to entertain the objection unless it was patent on the face of the record. *BAPUJI AUDITRAM v. UMED-BHAI HATHESING* . . . 8 Bom., A. C., 245

23. ————— *Objection raised after remand on special appeal.*—A plaintiff presented to a Court not being the Court of the lowest grade competent to try it, was returned to the plaintiff. It was subsequently registered by the same Court in obedience to an order of the District Judge, and a decree was passed in plaintiff's favour. On appeal the defendant pleaded want of jurisdiction in the Court below. The plea was overruled, and the case remanded for re-trial on its merits. The Court of first instance again passed a decree in favour of the plaintiff, and the defendant again urged his plea of jurisdiction in appeal, but the Judge declined to go into it a second time. *Held* that, the suit not having been instituted in the Court of the lowest grade competent to try it, the District Judge had no power to direct the Court of first instance to hear the case, and although no special appeal was preferred against the decree of the District Judge in which he remanded the case for re-trial, it was still open to the defendant in special appeal to raise the plea of jurisdiction. *GANPUTRAY RANCHODJI v. BAI SURAJ*

[7 Bom., A. C., 79]

24. ————— *Objection raised on special appeal—Suing without authority.*—A widow, without any written authority, sued on behalf of her son, who was absent on military service beyond the jurisdiction of the Court; the defendant did not object to her want of authority in the Court of first instance, but did so in the Courts of appeal and special appeal. *Held* that the objection was a valid one. *SHIVRAM VITHAL v. BHAGIRATHIBAI*

[6 Bom., A. C., 20]

JURISDICTION—continued.**1. QUESTION OF JURISDICTION—continued.**

25. ————— *Objection raised on special appeal—Presumption of jurisdiction.*—*Held* by MARKBY, J., that whenever an objection is made to the want of jurisdiction for the first time in the High Court on special appeal, every presumption should be made in favour of the jurisdiction of the Courts below. *ROOKE v. PYARI LAL*

[4 B. L. R., Ap., 43; 11 W. R., 634]

26. ————— *Objection to jurisdiction taken at late stage of suit—Procedure.*—When an objection to the jurisdiction is first taken at a late stage of the suit, instead of being brought forward as it should be at the first stage of the suit when the plaint is presented for admission, the proper course is, even if the jurisdiction be doubtful, to proceed to determine the suit. *BAGRAM v. MOSES*

[1 Hyde, 284]

27. ————— *Procedure on allowance of.*—Where the objection of jurisdiction had been raised and allowed at an early stage of the case, the plaint should have been returned to be presented in the proper Court. *KHOOSHAL CHUND v. PALMER*

[1 Agra, 280]

KHANDU MORESHVAR v. SHIVJI GORKOJI

[5 Bom., A. C., 212]

28. ————— *Objection taken on appeal—Costs.*—Where the plea of want of jurisdiction was taken in special appeal, each party was made to bear his own costs. *NOBEN KISHEN MOOKERJEE v. SHIB PERSHAD PATTACK*

[7 W. R., 490]

29. ————— *Application for execution of decree—Objection apparent in record.*—*Quære*—Whether, upon an application for execution of a decree, an objection, apparent on the face of the record, to the jurisdiction of the Court which made the decree, can be entertained. *MOHAN ISHWAR v. HAKU RUPA* . . . I. L. R., 4 Bom., 638

30. ————— *Objection to order made without jurisdiction—Objection on appeal from subsequent order.*—A Court has no jurisdiction, reading s. 372 of the Civil Procedure Code with s. 647, to bring in a party after decree and make him a judgment-debtor for the purposes of execution. *Gocool Chunder Gossamee v. Administrator General of Bengal*, I. L. R., 5 Calc., 726, and *Attorney General v. Corporation of Birmingham*, L. R., 15 Ch. D., 423, referred to. Where a Court had so acted, by an order which might have been, but was not, made the subject of appeal under s. 588 of the Code,—*Held* that, as there was no jurisdiction to make such an order, the party aggrieved was competent to object thereto on appeal from a subsequent order enforcing execution against him as a judgment-debtor. *GOODALL v. MUSSOORIE BANK* . . . I. L. R., 10 All., 97

31. ————— *Objection that certificate had not been obtained for suit—Suit under Dekkan Agriculturists' Relief Act.*—*Held* that an objection to a suit under the Dekkan Agriculturists' Relief Act, on the ground that a proper

JURISDICTION—continued.

1 QUESTION OF JURISDICTION—continued.

suit ought to have been brought. *RESCISSIO CREDITORUM* & *MAX LALT SWANA* 23 W. R., 301

37. *Subj & c. matter—Act 11 of 1869, s. 25—What preliminary determinations the jurisdiction of a Court is the claim or subject matter of the claim, as estimated by the*

JURISDICTION—continued

1 QUESTION OF JURISDICTION—continued

[I L. R., 13 Bom., 421

33. *Objection as to jurisdiction first taken on second appeal—Haver*

of objection to jurisdiction—A suit of which the subject matter was less than Rs 500 was withdrawn against this decree was entered and determined tried the suit and passed a decree and an appeal in a subordinate Court. The subordinate Judge

by the District Judge without object in taken that the subordinate Court had no jurisdiction to hear and determine the suit. On second appeal the objection was taken as above. Held that the objection could not be waived but must prevail and the plaint be returned for presentation in the proper Court.

[I L. R., 13 Mad., 273

33. *Objection taken for first time on appeal—A plea of want of jurisdiction may be taken in the High Court, though not taken below. Macdonald & Haprell*

34. *Criminal Court—The case of a prisoner accused of the offence of attempting to elude by personation was referred for trial by the District Magistrate to a Magistrate, who, without a complaint being made to him, convicted and sentenced the prisoner. The conviction and sentence were confirmed by the Sessions Judge. On application to the High Court to grant the conviction on the ground that the Magistrate had no jurisdiction to try the case, the Court refused the application, as the question of jurisdiction had not been raised before the Sessions Court. Hoo & Vishwakam Dattatraya* 4 Bom., Cr., 33

35. *Suit instituted in wrong Court—Transfer of suit—Where a suit has been instituted in the wrong Court, the defect of jurisdiction is not cured by its transfer to the Court in which it ought to have been brought. Pachori & Awasthi & Jami Dastar* I L. R., 4 All., 478

36. *Case tried without jurisdiction owing to improper valuation—Civil Procedure Code 1859, s. 6—Irregularly not producing defendant—Valuation of suit—Act VIII of 1859 s. 6 occurring in a Code of Civil*

action with a view to determine in what Court the

FOR III

of the parties concerned cannot create it. Vishnu & Sakthabai Navabkhar & Krishnakao Mithan

[I L. R., 11 Bom., 153

NABO HANI & ASHREKHAI

[I L. R., 11 Bom., 160 note

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JURISDICTION—continued.**1. QUESTION OF JURISDICTION—continued.**

trial by the Assistant Judge.—*Held*, on objection taken on appeal, that the District Judge ought to have considered the objection, as involving a question of jurisdiction, though raised before him for the first time during the hearing, and not taken in the memorandum of appeal against the decree of the Assistant Judge. **MOTILAL RAMDAS v. JAMNADAS JAVERDAS** . . . 2 Bom., 42: 2nd Ed., 40

21. ————— *Objection raised for first time on appeal.*—A sued B in a Court which had no jurisdiction to entertain the claim. The suit was heard and determined in favour of B by the Munsif, whose decree was affirmed on appeal by the District Court. *Held* that A had a right in special appeal to take the objection that the Courts below had proceeded without jurisdiction. **BIJAI TRIMBAKJI v. TOMU VALAD KUREN**

[2 Bom., 200: 2nd Ed., 192

22. ————— *Objection raised on special appeal.*—Where an objection to the jurisdiction of the Court of first instance was taken for the first time in special appeal, being based on an illegal withdrawal of the suit by the District Judge from the Sudder Amien to the Assistant Judge's file, it was held that the High Court was not bound to entertain the objection unless it was put on the face of the record. **BAPUJI AUDITRAM v. UMEDRAMAI HATHESING** . . . 8 Bom., A. C., 245

23. ————— *Objection raised after remand on special appeal.*—A plaintiff presented to a Court not being the Court of the lowest grade competent to try it, was returned to the plaintiff. It was subsequently registered by the same Court in obedience to an order of the District Judge, and a decree was passed in plaintiff's favour. On appeal the defendant pleaded want of jurisdiction in the Court below. The plea was overruled, and the case remanded for re-trial on its merits. The Court of first instance again passed a decree in favour of the plaintiff, and the defendant again urged his plea of jurisdiction in appeal, but the Judge declined to go into it a second time. *Held* that, the suit not having been instituted in the Court of the lowest grade competent to try it, the District Judge had no power to direct the Court of first instance to hear the case, and although no special appeal was preferred against the decree of the District Judge in which he remanded the case for re-trial, it was still open to the defendant in special appeal to raise the plea of jurisdiction. **GANPUTRAY RANCHODJI v. BAI SURAJ**

[7 Bom., A. C., 79

24. ————— *Objection raised on special appeal—Suing without authority.*—A widow, without any written authority, sued on behalf of her son, who was absent on military service beyond the jurisdiction of the Court; the defendant did not object to her want of authority in the Court of first instance, but did so in the Courts of appeal and special appeal. *Held* that the objection was a valid one. **SHIVRAM VITHAL v. BHAGIRTHIBAI**

[6 Bom., A. C., 20

JURISDICTION—continued.**1. QUESTION OF JURISDICTION—continued.**

25. ————— *Objection raised on special appeal—Presumption of jurisdiction.*—*Held* by **MARKBY, J.**, that whenever an objection is made to the want of jurisdiction for the first time in the High Court on special appeal, every presumption should be made in favour of the jurisdiction of the Courts below. **ROOKE v. PYARI LAL**
[4 B. L. R., Ap., 43: 11 W. R., 634

26. ————— *Objection to jurisdiction taken at late stage of suit—Procedure.*—When an objection to the jurisdiction is first taken at a late stage of the suit, instead of being brought forward as it should be at the first stage of the suit when the plaint is presented for admission, the proper course is, even if the jurisdiction be doubtful, to proceed to determine the suit. **BAGHAM v. MOSES**
[1 Hydr., 284

27. ————— *Procedure on allowance of.*—Where the objection of jurisdiction had been raised and allowed at an early stage of the case, the plaint should have been returned to be presented in the proper Court. **KHOOSHAL CHUND v. PALMER**
[1 Agra, 280

KHANDU MORESHYAR v. SHIVJI GORKOJI
[5 Bom., A. C., 212

28. ————— *Objection taken on appeal—Costs.*—Where the plea of want of jurisdiction was taken in special appeal, each party was made to bear his own costs. **NOREEN KISHEN MOOKERJEE v. SHIB PERSHAD PATTACK**
[7 W. R., 490

29. ————— *Application for execution of decree—Objection apparent in record.*—*Quare*—Whether, upon an application for execution of a decree, an objection, apparent on the face of the record, to the jurisdiction of the Court which made the decree, can be entertained. **MOHAN LAKHWAR v. HAKU RUPA** . . . I. L. R., 4 Bom., 638

30. ————— *Objection to order made without jurisdiction—Objection on appeal from subsequent order.*—A Court has no jurisdiction, reading s. 372 of the Civil Procedure Code with s. 647, to bring in a party after decree and make him a judgment-debtor for the purposes of execution. **Gocool Chunder Gossamee v. Administrator General of Bengal**, I. L. R., 5 Calc., 726, and **Attorney General v. Corporation of Birmingham**, L. R., 15 Ch. D., 423, referred to. Where a Court had so acted, by an order which might have been, but was not, made the subject of appeal under s. 588 of the Code,—*Held* that, as there was no jurisdiction to make such an order, the party aggrieved was competent to object thereto on appeal from a subsequent order enforcing execution against him as a judgment-debtor. **GOODALL v. MUSSOORIE BANK** . . . I. L. R., 10 All., 97

31. ————— *Objection that certificate had not been obtained for suit—Suit under Dekkan Agriculturists' Relief Act.*—*Held* that an objection to a suit under the Dekkan Agriculturists' Relief Act, on the ground that a proper

JURISDICTION—continued

1 QUESTION OF JURISDICTION—continued.

[I. L. R., 13 Bom., 421

in a subordinate Court. The subordinate Judge tried the suit and passed a decree, and an appeal against this decree was entertained and decided by the District Judge without objection taken that the subordinate Court had no jurisdiction to hear and determine the suit. On second appeal the objection was taken as above. Held that the objection could not be waived, but must prevail, and the plaint be returned for presentation in the proper Court.

VELAYUDAY & ANUSCHAYAL

[I. L. R., 13 Mad., 273

33 —————
Objection taken for first time on appeal—A plea of want of jurisdiction may be taken in the High Court, though not taken below. *Macdonald v. Harper*.

16 W. R., Cr., 79

34 —————
Criminal Court.
—The case of a prisoner accused of the offence of attempting to cheat by personation was referred for trial by the District Magistrate to a Magistrate, who, without a complaint being made to him, convicted and sentenced the prisoner. The conviction and sentence were confirmed by the Session Judge. On application to the High Court to annul the conviction, on the ground that the Magistrate had no jurisdiction to try the case, the Court refused the application, as the question of jurisdiction had not been raised before the Session Court. *Hoo v. Vishwakumari Dayaramay*

4 Bom., Cr., 33

35 —————
Suit instituted in wrong Court.—Transfer of suit.—Where a suit has been instituted in the wrong Court, the defect of jurisdiction is not cured by its transfer to the Court in which it ought to have been brought. *Pachayoti Awasathi & Janani Dasani*

I. L. R., 4 All., 478

36 —————
Case tried without jurisdiction owing to improper valuation.—*Civil Procedure Code, 1858, s. 6.—Irregularly not producing defendant—Valuation of suit.—Act VIII of 1859, s. 6, occurring in a Code of Civil*

JURISDICTION—continued.
1 QUESTION OF JURISDICTION—continued.
suit ought to have been brought. *REKSHI CHANDAN & MAJ LALL SHARMA*

37. —————
Subj & c.

inapplicable—*Act XIV of 1869, s. 25*—What prima facie determines the jurisdiction of a Court is the claim, or subject matter of the claim, as estimated by the plaintiff, and the determination having given the jurisdiction, the jurisdiction itself continues, whatever the event of the suit. And this is so, notwithstanding a bona fide error in the estimate made by the plaintiff. But the plaintiff cannot oust the Court of its jurisdiction by making unavailing additions to the claim which cannot be sustained and which there is no reasonable ground for expecting to sustain. *LAKSHMAN BHATTAR & BHARATI BHATTAR*

[I. L. R., 8 Bom., 31

38. —————
Suit brought under honest intention could not be cured by the production of a written authority on special appeal. *SHIVARATN & BHADANTHAR*

6 Bom., A. C., 20

39. —————
Applying it by honest misinformation. The original jurisdiction being thus justified a special Judge has a new trial. *KONDARI BHARATI & AKAN*

[I. L. R., 7 Bom., 448

40 —————
Suit against Sardar.—Respective effect of appointment.—Creation of the defendant as Sardar in 1867 cannot have a retrospective effect so as to affect a suit instituted against her in the Civil Court in 1861 and to render the decree of that Court one without jurisdiction. *RAMJI PATIL & APPA*

13 Bom., 13

41. —————
Exercise of jurisdiction by Court wrongly, owing to negligence of party.—Where jurisdiction over the subject-matter exists requiring only to be invoked in the right way, the party who has invited or allowed the Court to exercise jurisdiction cannot create it. *VISHNUPATI NAGARAY & KHUSHNARAY MATHUR*

[I. L. R., 11 Bom., 163

NANO HARI & ANUSCHAYAL

[I. L. R., 11 Bom., 160 note

C x 2

JURISDICTION—continued.

1. QUESTION OF JURISDICTION—continued.

be entitled to irregular, interfere with, but, at Court on a cross-motions, to which can be waived by the conduct of the parties and a party who, in a close holiday, does attend, and cannot afterwards successfully dispute the jurisdiction of the Court.

v. Elliott
row Hall
 referred to. *HAN JAS CHAKRABARTI v. OFFICIAL LIQUIDATOR OF THE COTTON SPINNING COMPANY*
11 L. R., 9 All., 360
49.
Transfer of case

written statement and subsequently insisted on.
L. R., 13 L. A., 134
L. R., 8 All., 101
50.
Objection to jurisdiction offer consent.—In a case which a Judge is competent to try, if the parties without objection join issue and go to trial upon the merits, the defendant cannot subsequently dispute the jurisdiction upon the ground of irregularities which, if objected to at the proper time, might have led to the dismissal of the suit. But when the Judge has no jurisdiction over the subject-matter of a suit, the parties cannot by their mutual consent convert it into a proper judicial process. *Ladgar v. Bull*, **L. R., 13 L. A., 134**, referred to and followed. *M. NAKHAI NAIRO v. SUBHAKSHY BAKSHI*
L. R., 11 All., 28
L. R., 14 L. A., 160
L. R., 23 All., 314
51.
Waiver of jurisdiction.—*Consent of parties.*—An objection to jurisdiction cannot be waived by the parties. *LADDOOCHARI SHAW v. LADDOOCHARI SHAW*
1 Ind. Jur., N. S., 319
11 W. R., 270
Contra, see TICKAY LALL DOS v. MAHANTH

52.
Omission to raise plea of jurisdiction.—In a suit in a Master's Court on a right of pre-emption, in which plaintiff undertakes his claim, the defendant, without objecting to the jurisdiction, allowed the case to go to trial, and, after passing through the authoritative Court, appeal came up.

53.
Omission to raise plea of jurisdiction.—Held that, if a defendant appears in a suit and does not raise the plea of want of jurisdiction, he must be taken to submit to the jurisdiction, and that any decree which

POTASHIA
2 Bom., 300; 2nd Ed., 374
8 Mad., 14
KANNOJI LALANI v. NERLAK CHETTIAR, APPEAL

54.
Defendant not taking plea of jurisdiction.—Effect of.—Where a Court has no inherent jurisdiction over the subject-matter of a suit, the parties cannot by their mutual consent give it jurisdiction. A suit of a nature cognizable by a Court of small Causes alone was

55.
Agreement not to submit to execution of decree.—*Jurisdiction.*—A decree-holder, with a certificate showing that satisfaction of his decree had not been obtained in the district in which it had been passed, applied to the Judge of another district and succeeded in obtaining partial execution. Upon a second attachment issuing in his petition that, if he did not satisfy the debt within the period named, the property might be sold. His prayer was granted. He then raised the plea that the Court which made the decree had no jurisdiction to entertain the suit. *Held* that, having pleaded in the Court below on the assumption that the decree was a money-decree which the Court which made it

that the defendant did not raise the plea of want of jurisdiction in the Appellate Court did not clothe that Court with a jurisdiction not given to it by law.
LADJI BEZAR v. KAJAR HADIA
11 L. R., 13 Bom., 650

JURISDICTION—continued.

1. QUESTION OF JURISDICTION—continued.

JURISDICTION—continued.**1. QUESTION OF JURISDICTION—continued.**

had jurisdiction to make, it was not open to the judgment-debtor's pleader to urge that it was not a money-decree. **RADHA GONIND GOSSAMI v. OOMA SUNDUREE DOSSIA** **24 W. R., 363**

58. ———— *Omission to raise objection to execution of decree.*—Certain property having been sold in execution of a decree by a Court to which the decree had been transferred, a suit was brought to set aside the sale on the ground that the Court from which the transfer had been made had no jurisdiction to grant, as it did, a certificate of non-satisfaction. It appeared that on execution being applied for in the Court to which the decree had been transferred, no objection to the jurisdiction had been raised. *Held* that the objection, assuming it to be valid, was taken too late and the sale could not be set aside. **MODUN MONUN GHOSH HAZRA v. BONDIA SONDAI DASIA** **8 C. L. R., 261**

57. ———— *Omission to raise plea till late stage of case—Right to raise, on special appeal.*—A Munsif having returned a plaint under Act XXIII of 1861, s. 8, and dismissed the suit as being in value beyond his jurisdiction, the plaintiff appealed to the District Judge, who, on the 14th June 1872, pronounced the decision wrong, and ordered the Munsif to try the suit. The suit was accordingly tried and dismissed, but on appeal it was decreed, by the Subordinate Judge. Subsequently a special appeal was preferred in which objection was raised on the score of jurisdiction. *Held* that the objection could not be taken at this stage, as the defendant had not chosen to appeal against the District Judge's order of 14th June 1872. **KOYLASH CHUNDER GHOSH v. ASHRUP ALI** **22 W. R., 101**

RAJ NARAIN v. ROWSHAN MULL **22 W. R., 126**

56. ———— A suit for rent having been brought in the Beerbloom Collectorate and decreed, the case was referred in execution to the Collector of Burdwan, within whose jurisdiction the property lay. The tenure was sold by the Deputy Collector of the latter district and purchased by the decree-holder. Appeals were made to the Collector and the Commissioner by the judgment-debtor, and were rejected by both officers. The judgment-debtor then brought a suit for possession in the Civil Court, and obtained a decree reversing the sale on the ground that the decree for rent had been made by a Collector who had not jurisdiction. *Held* that, after all that had passed, it was too late to raise the question of jurisdiction. **OOMA SOONDUREE DOSSEE v. BIPIN BEHAREE ROY** **13 W. R., 292**

59. ———— *Civil Procedure Code, 1882, s. 20.*—In 1876, *K* sued *M* on a bond, dated 25th December 1861, for Rs.5,000, by which certain land in the district of South Tanjore was hypothecated as security for the debt, and obtained a decree on the 6th of April 1876 for the sale of the lands, which he purchased on the 17th August 1876 for Rs.6,000. *K* then discovered that part of the land hypothecated, situated within the jurisdiction of the subordinate Court at Kumbakonam, had been acquired by a railway company under the Land Acquisition

JURISDICTION—continued.**1. QUESTION OF JURISDICTION—concluded.**

Act in 1874, and that the compensation, Rs.460 (claimed by *M*'s mother, who sold the land to the company), was lodged in the treasury of Kumbakonam in the name of *M*'s mother. *K* having applied to the subordinate Court for an order for payment out of this sum, the Court, by order dated 28th February 1880, directed that the question of title to the money should be decided by suit. *K* then sued *M* as the sole heir of his deceased mother in the District Munsif's Court of Tiruvadi (where *M* resided) for a declaration of right to and to recover the said sum of Rs.460. On the 16th April 1880, *M* assigned his interest in the money sued for to *V*, who was made defendant in the suit on his own application, and pleaded that the Court had no jurisdiction, as both the money and the land which it represented were, and he (*V*) resided, without the Munsif's Court's jurisdiction. *Held* that the suit was for money, and that *V*, not having applied to stay proceedings under s. 20 of the Civil Procedure Code, must be held to have acquiesced in the jurisdiction of the Court. **VENKATA VIBARAGAVA AYYANGAR v. KRISHNASAMI AYYANGAR** **I. L. R., 6 Mad., 344**

60. ———— *Subsequent plea of, by same party in another case.*—The fact of a defendant not subject to the jurisdiction of a Court having waived his privilege in previous suits brought against him does not give the Court jurisdiction to entertain a suit against him in which he pleads that he is not subject to such jurisdiction. **BEER CHUNDER MANIKKIA v. RAJ COOMAR NOBODEEP CHUNDER DEB BURMONO**

[I. L. R., 9 Calc., 535; 12 C. L. R., 465]

61. ———— *Waiver of want of jurisdiction—Civil Procedure Code, s. 25, Order made under, without notice to the party not applying—Transfer of civil case.*—A suit for land was filed in 1883 in the subordinate Court of Cochin. In 1884, the Government, by a notification under Act III of 1874, transferred the district where the land was situated from the jurisdiction of that Court to that of the subordinate Court of Calicut, whereupon the plaintiff applied to the District Court to transfer the case to the file of the first-mentioned Court under s. 25 of the Code of Civil Procedure. The District Judge granted the application without notice to the defendants. The defendants went to trial, and also preferred an appeal against the decree, which was passed in favour of the plaintiff, without objection to the jurisdiction of the Court. In execution of the above decree (which was affirmed on appeal), the plaintiff was obstructed. He therefore filed the present suit against the obstructors under the provisions of s. 331 of the Code of Civil Procedure, and they pleaded that the decree sought to be executed had been passed without jurisdiction. *Held* (1) that the want of notice to the defendants of the application made under s. 25 of the Code of Civil Procedure was immaterial; (2) that the defect, if any, of the jurisdiction of the Court passing the decree had been waived by the defendants, and that the present defendants were precluded from availing themselves of it. **SANKUMANI v. IKORAN** **I. L. R., 13 Mad., 211**

JURISDICTION—continued.

JURISDICTION—continued.

WORKING FOR DAIM.

02. Dwelling-place—*famulus* re-
ferrunt—Whatever the purpose for which a man

family dwelling-house must be considered to be his family residence, if there is an animal kept there, the animal is not a pet animal, but a dog, cat, or other animal kept for the purpose of being a pet animal, and the animal is not a pet animal, but a dog, cat, or other animal kept for the purpose of being a pet animal.

03 — Civil Procedure — 1519

which he has a right to
permanently
residence—Sole
control, both
of the land and
the water.

79 — Occasional residence — Occasional residence will not bring a defendant within the jurisdiction; he must be kept for a longer period in the district in which the suit is brought.

11 Ind. Jur., 68, 86
S. C. LITTLE LEMBERT & GORDON (HOSKIN)
March, 64: 11 Ind., 133

65. — Dwelling—*Letters P. & M.*
cl. 12—Temporary residence—Habits, calling, and
nature of establishment.—A person having a permanent residence at Dinapore came to Calcutta and resided there temporarily for the purpose of carrying on such *Held* that he could not be said to dwell in Calcutta.
Letters Patent.
the date of
deciding upon
jurisdiction. *James Watt's* *Kind*
 [Cor., 40: 2 Hyde, 117]

07. Letters Patent,
VASSI PHARMAC WATKINS
dicted under cl. 12 of the Letters Patent. KA-
113

Held that it was not necessary to obtain the leave of

2. CASES OF JURISDICTION—continued.

be obtained under cl. 12 of the Letters Patent, 1868, given if it was obtained when the suit was originally filed. HANSMAN SAMANTHAN v. FOOTBALL

60. _____ Civil Procedure Code, 1859, s. 5.—“What constitutes ‘dwelling’ within the meaning of that section,—A tenant who cultivated the income of his ‘allanah,’ ‘‘asamdar,’’ Illawar, and Balandahary, to his five sons in equal shares, and ‘‘that’’ lands”

an establishment was maintained at the expense of the estate. At Haverly, in Hawaii, there was also a residence belonging to the estate and another at Wailua. The will directed that the brothers might, if they liked,

... was filed, either by contract or in practice,

11 L. R. 3 AM, 189
L. R. 71. A., 189

70. Letters Patent, 1886, cl. 13—"Dull"—"Carry on business"—"Personally working for gain"—"The plaintiff claimed to be the archy or high priest of the

JURISDICTION—continued.**2. CAUSES OF JURISDICTION—continued.**

Vaishnav community and the Maharaj Tikait of Shri Nathji at Nathdwar, in the territories of the Maharana of Oodeypore. In 1876, he was deported from the territories of His Highness, and his son, the defendant, had ever since been in charge of the shrine. The plaintiff alleged that at the time of his deportation he had money and valuables at Nathdwar which he had entrusted to his son, the defendant, for safe custody. He now sued to recover this property from the defendant. The defendant pleaded that the High Court of Bombay had no jurisdiction to try the suit. It appeared that the defendant's permanent residence was at Nathdwar, from which he was absent only when on pilgrimage or on tour. He had in Bombay an establishment called a *pedi* in which a *bhandari* or treasurer, a *munim*, and *nichas* and servants were regularly employed. Into this *pedi* offerings made to the shrine of Shri Nathji by devotees were paid, as also offerings to another shrine at Nathdwar of which the defendant claimed to be the owner, and to a very small extent offerings to the defendant personally as the owner of such shrines. The defendant had similar establishments in other places in the Bombay Presidency. The offerings collected in them were transmitted to the Bombay *pedi* and dealt with there. The moneys from the Bombay *pedi* were transmitted to Nathdwar sometimes by means of *hundls* drawn at Nathdwar on the Bombay *pedi* and honoured by that *pedi*, and sometimes by articles being purchased for the defendant's use by the servants of the *pedi* in Bombay and sent to Nathdwar. In May 1888, the defendant agreed to purchase a house in Bombay for Rs. 18,500. Earnest-money (Rs. 10,000) was paid out of moneys in the Bombay *pedi*, and the employes of the *pedi* after the purchase lived in the house. Interest was paid on the unpaid purchase-money. In 1889, when the defendant visited Bombay, he lived in this house, but he sold it in the same year shortly before he returned to Nathdwar. The defendant had never been in Bombay until 1889. In that year, in accordance with the practice, he obtained from the British Resident at Meywar a permit to travel with an armed following to the places mentioned in the permit, one of which was Bombay. The journey was supposed to last for six months. The defendant left Nathdwar in February 1889, and after various stoppages reached Bombay on the 2nd April, and took up his quarters at the house above mentioned. The reason assigned for his coming to Bombay was that his devotees had asked him to come. When in Bombay, his followers visited him, and he visited their houses on invitation. On these occasions he received offerings which in the aggregate amounted to about Rs. 75,000. These offerings were personal, and were not paid into the *pedi*. This suit was filed on the 3rd May 1889, while the defendant was in Bombay. Early in August he left Bombay and returned to Nathdwar. The plaintiff contended that the Court had jurisdiction under cl. 12 of the Letters Patent, 1865. *Held* that at the date of the institution of the suit the defendant was neither dwelling, nor carrying on business, nor personally working for gain, in Bombay, and that the Court had no jurisdiction. **GOSWAMI SHRI 108 v. GOVARDHAN-LALJI** . . . **I. L. R., 14 Bom., 541**

JURISDICTION—continued.**2. CAUSES OF JURISDICTION—continued.**

71. ————— *Residence for temporary purpose—Receipt of presents by high priest of temple—Office for receiving presents—Purchase of house—Letters Patent, High Court, cl. 12.*—The word "dwell" must be construed with reference to the particular object of the enactment in which it occurs. Residence in Bombay merely for a temporary purpose is not to "dwell" there so as to give jurisdiction to the High Court under cl. 12 of the Letters Patent, 1865. *Held* that the mere fact that the defendant had purchased the house which he occupied during a temporary visit to Bombay afforded no inference of an intention to dwell there. A defendant who was the *acharya* or high priest of the Vaishnav community and the Maharaj Tikait of Shri Nathji at Nathdwar had a *pedi*, or place of business, in Bombay where devotees paid in any presents they intended to offer him. *Held* that this did not amount to "carrying on business" so as to give the High Court jurisdiction under cl. 12 of the Letters Patent, 1865. The defendant, when in Bombay, was invited by his devotees and pupils to their houses, where he was treated as an incarnation of the deity with certain forms and ceremonies, and received presents, and gave his blessing. *Held* that this did not amount to "personally working for gain" within the meaning of cl. 12 of the Letters Patent, 1865. **GOSWAMI SHRI 108 SHRI GIRDHARJI v. GOVARDHAN-LALJI GIRDHARJI** **I. L. R., 18 Bom., 290**

Held, on appeal to the Privy Council, that the expression "carry on business" in cl. 12 of the Letters Patent, 1865, is intended to relate to business in which a man may contract debts, and ought to be liable to be sued by persons having business transactions with him. The defendant, who was an *acharya* of the Vaishnav community and was head of their institution at Nathdwar in Udepur, where he usually resided, was, when this suit was brought, in Bombay for a time. He had in the latter place a treasurer and other servants employed in an establishment for the collection and entry of gifts made by devotees; and there also donations, made in like establishments elsewhere, were received for transmission to Nathdwar. The defendant also, while in Bombay, accepted offerings on ceremonial visits made or received by him personally, but no bargain for the amount was made beforehand. *Held* by the Privy Council that in the above transactions there was no "carrying on business" within cl. 12 of the Letters Patent, 1865. **GOSWAMI SHRI 108 SHRI GIRDHARJI v. GOVARDHAN-LALJI GIRDHARJI**

**[I. L. R., 18 Bom., 294
I. R., 21 I. A., 13]**

72. ————— *Suit for rent of land in Gwalior, defendant being resident in British India—Place where defendant resides—Civil Procedure Code (1882), s. 17.*—*Held* that a suit by a lessor against his lessee to recover rent which had accrued due in respect of agricultural land situated in Gwalior, the plaintiff being a subject of the Gwalior State, but the defendant a British subject resident in the district of Jhansi, was properly brought in a Civil Court in the district of Jhansi.

JURISDICTION—continued

2. CAUSES OF JURISDICTION—continued

Gardyl Singh v. Raja of Faridkot, I L R, 23 Cal, 222, referred to. Bhugyal v. Nayyar
[I L R, 10 All, 450]

73. —*Immovable Property—Civil Procedure Code (Act XIX of 1908)*

villages in the Mysore territory, and paid to the defendants by the treasury officers at Bangalore in the same territory. The plaintiffs alleged that the villages were granted to a common ancestor of the parties and enjoyed as joint ancestral property, while

a declaration of title or ask for a refund of the amount in a British Court, merely because the defendant happened to be resident in British territory
Keshav v. Vinayak [I L R, 23 Bom, 25]

74. —*Civil Procedure Code (1882) s. 10—Refusal to sue*

right to a share in certain income—*Property having a foreign origin—Income received within the jurisdiction of the Court*
[I L R, 23 Bom, 750]

share of contracts and trusts as to subjects which

JURISDICTION—continued

2. CAUSES OF JURISDICTION—continued

were not either locally or ratione domicilii within their jurisdiction. The jurisdiction of Courts in India is governed and must be ascertained by the same principles except so far as they may be at variance with legislative enactments. *King v. Off* [I L R, 24 Cal 31, followed. The plaintiff sued in the Court at Madras in British India to establish

the jurisdiction of the Court, there being no dispute as to title. *Ashraf v. Inayat, I L R, 23 Bom, 23, distinguished. Kashivanta Govind v. Ayyar* [I L R, 24 Bom, 407]
76. —*Residence after sale in Calcutta and elsewhere*—A party agent and resident in the latter for some days previous to and

Charter Monast v. Bhavadar [Bourke, O. C, 127; Cor, 153]
77. —*Temporary residence for pleasure—Person without residence elsewhere*—That a temporary residence in Calcutta, for purposes of pleasure with intention of remaining there a month without having at the time a real residence out of the jurisdiction, is a sufficient dwelling within the jurisdiction to satisfy cl. 12 of the

Mathew v. Telloch [Bourke, O. C, 127; Cor, 153]
78. —*Residence out of jurisdiction—Bringing suit for damages by collision—One who sues for damages by collision*
[4 Bom, O. C, 149]

79. —*Carrying on business—Suit against Government—Residence or place of business of Government—In a suit for specific performance of Government—In a suit for specific performance of Government—In a suit for specific performance of Government*
[4 Bom, O. C, 149]
jurisdiction of the Court—*Hovhat Coast and River Steam Navigation Company v. Hovhat*
[4 Bom, O. C, 149]
ling or carrying on business or "personally working for gain" within the local limits of the Court in the meaning of cl. 12 of the Letters Patent. The words "personally working for gain" were intended to be confined to the

JURISDICTION—continued.

2. CAUSES OF JURISDICTION—continued.

each particular cause of action. *RUNDLE v. SECRETARY OF STATE* . . . 1 Hyde, 37

80. ————— *Suit against Government—Civil Procedure Code, 1859, s. 5.—Letters Patent, cl. 12.—Semble*—The jurisdiction to entertain suits against the Government under s. 5 of Act VIII of 1859 exists only where the cause of action arose. Under cl. 12 of the Letters Patent (1862) constituting the High Court of Madras, the Government must be considered as carrying on business at the place where its members exercise all the functions of Government. The words "carry on business" in that clause imply a personal and regular attendance to business within the local limits. A suit will not lie in the High Court against the Collector of Madras residing and carrying on business at Sydapet in respect of matters arising in Chingleput, though his Deputy Collector carried on business within the local limits, and the orders and proceedings in reference to the matters in question were in his name of office as Collector of Madras. *SUBBARAYA MEDALI v. GOVERNMENT* 1 Mad., 286

81. ————— *Letters Patent, cl. 12.—Secretary of State for India in Council.*—The words "cause of action" in cl. 12 of the Letters Patent, 1865, mean all those things necessary to give a right of action; and in a suit for breach of contract, where leave has not been obtained to sue under that section, it must be established that the contract as well as the breach have taken place within the local limits of the Court. The work carried on by the Government of India in governing the country, in salt, opium, etc., although carried on by Government officers in charge of the several departments of Government, is not, properly speaking, business carried on by Government, but work carried on for the benefit of the Indian Exchequer. The words of cl. 12 "carry on business or personally work for gain" are, however, inapplicable to the Secretary of State for India in Council. *DOYA NARAIN TEWARY v. SECRETARY OF STATE FOR INDIA*

[I. L. R., 14 Calc., 256]

82. ————— *Civil Procedure Code, 1877, s. 17.—Residing—Onus probandi.*—Where the cause of action arises in the jurisdiction of a Court other than that in which the suit is brought, the plaintiff must, under the provisions of s. 17 of Act X of 1877, show that the defendant at the time of the commencement of the suit actually and voluntarily resided or carried on business, or personally worked for gain, within the jurisdiction of the Court in which the suit was brought. *MODHU SUDAN CHOWDHRY v. COCHRANE* . 6 C. L. R., 417

83. ————— *Letters Patent, cl. 12.—Temporary stay and office in Calcutta.*—A, who had no regular office, but came once or twice a week from the mofussil to a friend's house in Calcutta, and saw people there on business, contracted with B in Calcutta for the hire of certain cargo-boats. While being towed by a steamer, which A had chartered according to agreement, the boats, when beyond the jurisdiction of the Court, sustained great

JURISDICTION--continued.

2. CAUSES OF JURISDICTION—continued.

damage by reason of gross negligence on the part of C, whom A had placed in charge. *Held* (1) that the cause of action did not arise in Calcutta; (2) that A "carried on business" in Calcutta within the meaning of cl. 12 of the Charter. *GREENSH CHUNDER BANERJEE v. COLLINS* . . . 2 Hyde, 79

84. ————— *Letters Patent, cl. 12.—Temporary residence.*—M, residing at Meerut, sued B in respect of a cause of action which did not arise in Calcutta. It appeared that B usually resided at Mussoorie from March to October, but attended races at Meerut, Calcutta, and elsewhere, at which races he ran horses, but not for gain. B had no pursuit or occupation other than that afforded by his horses. He had come to Calcutta to attend a race meeting, and had been living in Calcutta for some days previous to and on the day the plaint was filed. The Court decided that he was amenable to its jurisdiction. *Held* that such racing transactions do not constitute a "carrying on business" or "personally working for gain" within the meaning of cl. 12 of the High Court Charter. *MORRIS v. BAUMGARTEN*

[Bourke, O. C., 127 : Cor., 152]

MAXHEW v. TULLOCH . . . 4 N. W., 25

85. ————— *Letters Patent, cl. 12.*—A trader in the mofussil habitually sent grain to Madras for sale by a general agent for the sale of goods sent to him by different persons. On some occasions the trader himself accompanied the loaded bandies. Since his death the first defendant, his widow, carried on his business. The grain so sent for sale was never stored, but remained in the bandies until sold by the agent, who acted himself as broker, the purchasers paying his brokerage commission, and the consignors of the grain paying nothing. *Held* that the first defendant did not "carry on business" within the jurisdiction of the High Court of Madras within the meaning of cl. 12 of the Letters Patent. *CHINNAMAL v. TULUKANNATAMMAL* . 3 Mad., 146

86. ————— *Letters Patent, cl. 12.*—The defendant resided and carried on business in London, and employed C F & Co. as their commission agent in Bombay. The plaintiffs at Bombay executed a power-of-attorney in favour of the defendants to enable him to sue in England for certain money due to the plaintiffs, and handed the power-of-attorney to C F & Co., who undertook to forward it to the defendants in London, and that the defendants should endeavour to recover the money so due to the plaintiffs. The defendants recovered the money in England for the plaintiffs, but did not transmit it to the plaintiffs in Bombay. In a suit brought by the plaintiffs to recover the money so received by the defendants, it was held that the cause of action had not arisen wholly in Bombay, and that the High Court, under cl. 12 of its Letters Patent, had no jurisdiction to entertain the claim, the leave of the Court to file the suit not having been obtained. Where an English firm, upon the usual terms, employs a Bombay firm to act as the English firm's commission agents in Bombay, such English firm does not thereby render itself liable to be sued in the High Court of Bombay,

JURISDICTION—continued.**2. CAUSES OF JURISDICTION—continued.**

Civil Court at Pondicherry, sued him on the said judgment in a District Court in British India. The date of the foreign judgment was 20th March 1896, and that of the suit in British India, 12th October 1896; but in the meanwhile, namely, on 20th July 1896, defendant had been declared an insolvent in Pondicherry, and a syndic had been appointed to take charge of and administer his property. The ground of jurisdiction relied on by plaintiff was that defendant was carrying on a business within the jurisdiction of the District Court, the said business being conducted by his cousin; and that, the cousin being the manager of a Hindu family, the presumption was that the business was carried on with the consent of the defendant as well as for his benefit. *Held*, that the District Court had no jurisdiction to entertain the suit. Inasmuch as defendant and his cousin had, as a fact, become partially divided prior to the commencement of the business, and as there was no evidence of his consent, the presumption contended for could not arise. But even if the facts had been otherwise, and the defendant had been entitled to claim an interest in the business on the ground that it was carried on by one who was the managing member of his family at the time, defendant would not be "carrying on business" within the meaning of s. 17 of the Code of Civil Procedure. To bring a principal within the operation of s. 17, the person acting as the agent within the jurisdiction should be an agent in the strict and correct sense of the term. *Scoble*—That a member of joint family who actually consents to a trade being carried on within the jurisdiction on his behalf, or by his conduct puts himself in the position of a joint trader, carries on business within, though he may live outside, the jurisdiction. Whether s. 17 of the Code of Civil Procedure should be construed so as to exclude from its operation non-resident foreigners, even though they carry on business in British India through agents; and, if such construction be inadmissible, whether the said section of the Indian Legislature should be held with reference to such foreigners to be *ultra vires*.—*Quare*. **MURUGESA CHETTI v. ANNA-MALAI CHETTI** . . . **I. L. R., 23 Mad., 458**

93. Personally working for gain—Suit to recover value of timber.—A suit to recover the value of timber alleged to have been forcibly carried off by the defendants from a ghāt in the district of Tirhoot having been brought in the Court of the Subordinate Judge of the 24-Pergunnahs, that Court was held to have jurisdiction in the case, on its being shown that one of the defendants, at the commencement of the suit, personally worked for gain within the limits of the 24-Pergunnahs. **MOTER DOSSEE v. DRETA HURUKMUN SINGH**

[**11 W. R., 64**

94. Cause of action—Civil Procedure Code, 1859, s. 5—Jurisdiction—Suit for breach of contract.—When a person residing at Benares made an agreement at Allahabad with a barrister to conduct his case for him, which was then pending in the Court of the Judge of Benares, and it was alleged that an advance of fees had been paid on

JURISDICTION—continued.**2. CAUSES OF JURISDICTION—continued.**

the specific condition that such advance was to be returned in the event of the barrister not appearing on behalf of the party engaging him, or of his doing no work for him, or of the case being decided in his absence, and it was further alleged that the barrister did not appear at the hearing of the case, and that it was decided in his absence, and that the advance of fees had not been returned. *Held*, in a suit for the recovery of the money advanced as aforesaid, that the cause of action arose at Benares. If the alleged condition was not complied with, and the fees thereby became returnable to the client, it would have been the duty of the barrister to have sought out his creditor at Benares and to have paid him there, or have remitted the money to him. *Scoble*—That a member of the Bar of the High Court residing out of the station in which the High Court is located, but who holds himself out as ready to practise in the High Court, and who goes to the High Court whenever he is engaged to appear there, is one who "personally works for gain" inside of the limits of the station in which the High Court is located within the meaning of s. 5, Act VIII of 1859. **RAI NARAIN DASS v. NEWTON** . . . **8 N. W., 43**

(b) CAUSE OF ACTION.

95. General cases as to arising of cause of action—Civil Procedure Code, 1859, s. 5—Act XXIII of 1861, s. 3.—A Civil Court has jurisdiction to determine a suit where the defendants dwell, or the cause of action arises within the jurisdiction. The two qualifications need not exist together. Act XXIII of 1861, s. 3, requires the absence of both to justify the dismissal of the suit for want of jurisdiction. **MORRIS v. ARMAKURU LUTCHMANA ROW** . . . **8 Mad., 43**

ANONYMOUS CASE . . . **5 Mad., Ap., 4**

96. Letters Patent, cl. 12—Cause of action partly arising—Leave of Court.—Under cl. 12 of the Charter of the High Court, 1865, when the cause of action arises only partly within the local limits, the leave of the Court must be obtained before the institution of the suit. **ABDOOL HAMED v. PROMOTHOXATH BOSE**

[**1 Ind. Jur., N. S., 218**

97. Suit for sum made up of items as to which cause of action arose in different places—"Whole cause of action."—An application was refused for leave to commence a suit in the original side of the High Court, to recover a sum which was made up of various items, with respect to some of which the cause of action arose in Madras, but as to the great bulk of the claim, the cause of action arose elsewhere. Upon appeal the decision was sustained. *Per BRITTESTON, J.*—The High Court, especially when exercising its ordinary original jurisdiction, is bound to adopt the interpretation of the words "cause of action" and "part of the cause of action" laid down with general, if not complete, uniformity under the English County Court Act. The cause of action means the whole

JURISDICTION—continued

2. CAUSES OF JURISDICTION—continued

an account might be taken of the management by the first defendant of the business at Zambar, and that in taking such account the first defendant might be charged with all sums misappropriated by him, or lost by his neglect or fraud. The second defendant was joined as a defendant merely because he refused to join as a plaintiff. The plaintiff instanced various few of which and fraud or any of transfer of the Monday of the leave suit the leave obtained. On a summons taken out to rescind such leave,—*Heid*, that the leave given must be rescinded.

Shahmed Hadjee Joosub, 13 B L R. 95, referred to *Keshornji Dabodas Jaykar & Leckiyas Ladia* I L R. 13 Bom. 404

money due by one S. deceased. Defendants 1, 2, 3, and 4 were sued as heirs of the deceased, the fifth defendant as having instigated the other defendants

there were between the plaintiffs (merchants at Berliampur) and deceased a merchant at Madras, a series of transactions of different kinds, in which they acted sometimes as principal and sometimes as agent, the one for the other. *Heid*, although in the account sued upon there were some items which, if they could be separated from the rest, would give a cause of action within the jurisdiction of the Berliampur Court, they could not be so separated and that the intention was that the dealing should be continuous; that upon that footing the plaintiffs had the whole

tion of s. 4, Act XVIII of 1861, and that the cause as locally as to the *TRAVUN* J Mad. 222 *Civil Procedure Code, 1859, s. 5—Place of making and performance of contract different—B entered into a verbal agreement with A at Serampore, where A resided, to start in Calcutta a certain partnership business in*

JURISDICTION—continued.

cause of action The whole cause of action includes every fact essential to the maintenance of the action, and each of these facts separately is but a part of the cause of action The Charter of the High Court refers to a cause of action arising wholly or in part within the local limits. The cause of

cause of action and the whole cause of action. *De* 3 Mad. 384 *Soota & Coles*

Residence as to Jurisdiction at hearing—Letters Patent, High Court, of 12—Suit for rent of house out of jurisdiction and for price of goods sold by defendants in Calcutta

98. Account, Suit for—*Letters Patent, of 12—Leave to sue—Part of the cause of action material—The plaintiff and the second defendant were the owners of a family business and Zambar. The first defendant was for many years the manager in management of the business at Zambar. This suit was brought, praying that the plaintiff in management of the business should be charged with all sums misappropriated by him, or lost by his neglect or fraud. The second defendant was joined as a defendant merely because he refused to join as a plaintiff. The plaintiff instanced various few of which and fraud or any of transfer of the Monday of the leave suit the leave obtained. On a summons taken out to rescind such leave,—*Heid*, that the leave given must be rescinded.*

99. *L. R. 28 Cal. 716* *13 C. W. N. 624* *Account, Suit for—Letters Patent, of 12—Leave to sue—Part of the cause of action material—The plaintiff and the second defendant were the owners of a family business and Zambar. The first defendant was for many years the manager in management of the business at Zambar. This suit was brought, praying that the plaintiff in management of the business should be charged with all sums misappropriated by him, or lost by his neglect or fraud. The second defendant was joined as a defendant merely because he refused to join as a plaintiff. The plaintiff instanced various few of which and fraud or any of transfer of the Monday of the leave suit the leave obtained. On a summons taken out to rescind such leave,—*Heid*, that the leave given must be rescinded.*

JURISDICTION—continued.**2. CAUSES OF JURISDICTION—continued.**

conjunction with *A's* son; *A* agreeing to advance the required funds on the condition that the sum advanced should be repaid him within a certain date with interest. No place was fixed for repayment. The money was advanced partly at Serampore and partly in Calcutta. *H* afterwards went to reside at Chanderdigher. In a suit by *A* for recovery of the balance of the sum advanced brought in the Hooghly Court, the Judge held that he had no jurisdiction, inasmuch as the cause of action arose in Calcutta. *Held* on appeal that, under s. 5, Act VIII of 1859, the Hooghly Court had jurisdiction to try the suit. *PER MANBY, J.*—An action may be brought either in the forum of the place where the contract was made or in that where the performance was to have taken place. *Quære*—Whether this rule would apply if both parties were, at the time the contract was made, in a district where neither of them had any dwelling or place of business. *PER BUCH, J.*—When no place for the performance of a contract is prescribed by the agreement, or exacted by the necessities of the case, the place where it is intended by the parties such contract should be fulfilled ought to supply the forum. *GOPIKISHNA GOVSAMI v. NITKONUL HANSEJEE*

(13 B. L. R., 181; 22 W. R., 79)

102. *Agreement to repay balance struck.*—Where a balance was struck, and an agreement to repay the balance was drawn out at Cawnpore, *Held* the Cawnpore Court had jurisdiction to entertain a suit on that agreement, and its jurisdiction was not affected by the fact of the transaction, in respect of which the agreement was given, having happened elsewhere. *RAM RAJ v. RAM BUX* 1 *Agra*, 115

103. *Place of payment not specified.*—*D & Co.*, carrying on business at C, shipped goods to London for sale on account of *P D*, and advanced money to *P D* against the shipments. *P D* promised to pay the difference if the amount realized by the sales in London fell short of *D & Co.*'s advance, costs, and commission. No place of payment was specified. *Held*, in a suit to recover money due on account of such short falls, that the whole cause of action arose at C, where *D & Co.* carried on business, where the promise was made, and where the money must be taken to have been payable. *DARRAGH & Co. v. PURSHOTAM DEVEJI* 1 *L. R.*, 4 *Mad.*, 373

104. *Residence by agents—Joinder of causes of action.*—The right to join in one suit to causes of action against a defendant cannot be exercised, unless the Court to which the plaint is presented has jurisdiction over both causes of action. The defendants, who resided and carried on business at Bombay, acted as the agents of the plaintiff for the sale, purchase, and despatch of goods to Tellicherry, where the plaintiff resided. The plaintiff sued the defendants for money due on account of the transactions in Tellicherry. *Held* that no cause of action arose in Tellicherry. *KHUMJI JIVRAJ SHETTU v. PURSHOTAM JUTANI*

[1. L. R., 7 *Mad.*, 171]**JURISDICTION—continued.****2. CAUSES OF JURISDICTION—continued.**

105. *Venue—Act X of 1859, s. 21—Suit by zamindar against manager of two estates.*—The defendant was appointed a superintendent of two estates, one called Chulham, within the subdivision of Diamond Harbour, and the other Alipore, within the subdivision of Alipore. By his *kabuliat* he agreed to make good any retrenchments his employer, the zamindar, might make in his accounts. Some retrenchments were made, and to recover the balance which appeared due the zamindar brought this suit. *Held* that, as the defendant had agreed by his *kabuliat* to make the principal kutcherry his place of business, and as both the plaintiff and defendant agreed that the cause of action arose in the principal kutcherry, and as it was the place to which all the moneys were remitted, and where all the accounts were prepared, and the money first came under the control of the defendant and was by his order disbursed, the cause of action arose in the district within which the principal kutcherry lay. *PRASANNA CHANDRA BOSE v. PRASANNA CHANDRA RAJ* 7 *B. L. R.*, *Ap.*, 35 [15 *W. R.*, 343]

106. *Agreement—Part of cause of action arising in jurisdiction—Suit on agreement executed within jurisdiction—Place for payment of money under deed—Costs of preparing a deed—Stamp duty.*—In December 1892, the plaintiffs agreed to supply the defendants with machinery for their mill near Calcutta. The defendants, being unable to pay for it in accordance with that agreement, entered into a supplementary agreement with the plaintiffs on the 10th August 1894, whereby it was arranged that the plaintiffs should accept shares in the defendants' company and debentures charged on the property in satisfaction of their claim. The agreement provided that the defendant company should forthwith execute an indenture of trust, in favour of trustees to be named by the plaintiffs, for the purpose of securing the said debentures, such indenture to be prepared by the plaintiffs' solicitors together with the debentures at the expense of the company and to be approved by the company's solicitors. It was lastly provided that this agreement should be treated as forming part of, and supplemental to, the agreement of December 1892. This agreement was signed in Bombay by J. Marshall on behalf of the plaintiffs. The indenture and debentures were duly prepared by the plaintiffs and approved by the defendants' solicitors in Bombay. The plaintiffs, having paid in Bombay the solicitor's bill of costs in respect of the preparation of the indenture and debentures, now sued to recover the amount from the defendants under the terms of the above agreement of 1894. The defendants contended that the Court had no jurisdiction, on the ground that they did not reside or carry on business in Bombay, and that no part of the cause of action arose in Bombay. *Held* that the Court had jurisdiction. The agreement of August 1894 was signed in Bombay by the plaintiffs' agent on their behalf, and therefore part of the cause of action arose within the jurisdiction. Further, it appeared that it was intended that the

JURISDICTION—continued

2. CAUSES OF JURISDICTION—continued.

breach of a contract, the making of the contract is a cause of action. *Held* therefore, that the contract was made at C and broken at A, and that the Court at C had jurisdiction to try the suit for compensation for the breach of such contract. *See* *Electricity v. Chinnai Toi*, 1 L. R., 411, 423, and *Gopichand Govind v. Dikshitar Bankers*, 13 B. L. R., 461, followed. *Desouza v. Coler*, 3 Mal., 394, and *Ammaiah Periah v. Dhanuvaran*, 5 C. L. R., 369, dissented from. *See* *Prasad v. Prasad*, 1 L. R., 411, 423.

111. *Performance of contract—Goods to be shipped at Bombay to the plaintiff at Awarer—Place of contract—Taking of contract—Goods to be shipped at Bombay to the plaintiff at Awarer—Place of contract—Action arose—The plaintiff residing at Awarer sent a sum of money to A & Co. (defendant No. 1), a firm at Bombay, asking them to send him certain goods. A & Co. informed the plaintiff that they had not the goods required by him. The plaintiff thereupon telegraphed to them to pay the amount to defendant No. 2, a resident of Bombay, who provided he shipped the goods. On the failure of defendant No. 2 to ship the goods, the plaintiff brought a suit against the defendants in the Court at Awarer to recover the amount. He claimed against A & Co. (defendant No. 1) because they had paid the money to the second defendant before the goods were shipped and against the second defendant because he had not shipped the goods, although he had received the money. The Court at Awarer was of opinion that Awarer was the place where the contract was to be performed and that therefore it had jurisdiction to entertain the suit and it passed a decree against defendant No. 2. The claim against defendant No. 1 was dismissed. *Held*, reversing the decree that the understanding on which the money was paid to defendant No. 2 by A & Co., and which was the agreement on which the plaintiff sued, was that the second defendant would ship the goods.*

112. *Consignments and sale of goods—Suit on failure to sell where agreed—When goods were consigned for sale to Calcutta*—The cause of action arose therefore in Bombay, and the Court at Awarer had no jurisdiction. *Prasad v. Prasad*, 1 L. R., 411, 423.

Prasad v. Prasad, 1 L. R., 411, 423.

Prasad v. Prasad, 1 L. R., 411, 423.

was stipulated that the value of the goods should be

JURISDICTION—continued.

2. CAUSES OF JURISDICTION—continued.

payment to be made by the plaintiff as well as made in Bombay where both the plaintiff's agent and solicitors resided. *Held* also that the plaintiff's were entitled to include in their claim the stamp duty paid on the trust-deed. The agreement contemplated that the defendants should pay all the costs incidental to the execution of the deed. *Prasad v. Prasad*, 1 L. R., 411, 423.

107. *Bond, Suit on—Immediate cause of suit—Civil Procedure Code, 1859, s. 5—5 of Act VIII of 1859 gave jurisdiction to the Court where the cause of action shall have arisen or in other words, where the facts which immediately confer the right to sue have occurred. Where the immediate cause of the suit was the non-payment of money due on a bond,—Held that the Court of the place where default had been made in payment had the jurisdiction to try the suit, and not the Court within the jurisdiction of which the bond was made. *Prasad v. Prasad*, 1 L. R., 411, 423.*

Prasad v. Prasad, 1 L. R., 411, 423.

Prasad v. Prasad, 1 L. R., 411, 423.

Prasad v. Prasad, 1 L. R., 411, 423.

cause of action, but includes material part of the cause of action, as used in s. 17 of the Civil Procedure Code, does not mean whole

JURISDICTION—continued.**2. CAUSES OF JURISDICTION—continued.**

paid for at the market rate at Purola. The goods were not delivered in pursuance of the agreement. *Held*, in an action brought to recover their value at the market rate at Purola, that the cause of action arose at Padsha, where the goods ought to have been delivered. **CHUNILAL MANIKLABHAI v. MANIPATRAY VALAD KHUNDU** . - 5 Bom., A. C., 33

114. ——— *Goods delivered through carrier—Delivery at consignor's risk.*—*A* sued *B* for goods sold in Madras and delivered to *B* personally outside the local limits of the High Court's original jurisdiction. *B* dwelt outside those limits, the goods were sent to him at his request, sometimes by sea, sometimes through the post office, but always at *A*'s risk during the journey. *Held* that the suit must be dismissed for want of jurisdiction. So long as goods, though delivered to a common carrier appointed by the consignee, remain at the risk of the consignor, they are not delivered to the consignee. **WINTER v. WAY** 1 Mad., 200

115. ——— *Letters Patent, cl. 12—Non-delivery of goods.*—Plaintiffs contracted at Cawnpore with the East Indian Railway Company to deliver goods in Madras. The East Indian Railway does not run into the jurisdiction of the Madras High Court. The Railway Company made default in delivery of the goods, and the plaintiffs sued them in the Madras High Court for damages for the breach of contract. No leave to sue (under cl. 12 of the Letters Patent) was obtained. The Court of first instance dismissed the suit for want of jurisdiction. *Held*, on appeal, following *Gopikrishna Gossami v. Nilkomul Banerjee*, 13 B. L. R., 461, and *Vaughan v. Weldon*, L. R., 10 C. P., 47, that the breach of contract having taken place at Madras, the cause of action had wholly arisen within the jurisdiction of the High Court. **MUHAMMAD ABDUL KADAR v. E. I. RAILWAY COMPANY**

[I. L. R., 1 Mad., 375]

116. ——— *Part of cause of action in jurisdiction.*—Where defendant, in an action for goods sold and delivered, pleaded want of jurisdiction, inasmuch as the whole cause of action did not arise within the jurisdiction, the Court found that a material part of the cause of action had arisen within the jurisdiction, and gave a decree for plaintiff, leaving it to defendant to dispute execution if so advised. **DOORGAPERSAD BOSE v. WATERS**

[1 Ind. Jur., N. S., 191]

117. ——— *Civil Procedure Code, 1859, s. 5.*—By a contract entered into at Beerpore, in the district of Nudda, the plaintiff agreed to supply indigo seed to the defendant, the seed to be paid for on delivery by an order to be sent to the plaintiff on receipt of the seed. The plaintiff resided at Berhampore, in the district of Moorsheadabad, and the defendant carried on business at Beerpore, in the district of Nudda, where delivery was to be made. The seed was delivered by the plaintiff as agreed, but the defendant refused to pay for it. In an action brought in the Moorsheadabad Court to

JURISDICTION—continued.**2. CAUSES OF JURISDICTION—continued.**

recover the price of the seed,—*Held* that the Moorsheadabad Court had jurisdiction to entertain the suit. The refusal of payment by the defendant, which was to have been made in the district of Moorsheadabad, was a sufficient cause of action under s. 5, Act VIII of 1859, to enable the plaintiff to sue in that Court. *Semble*—The words "cause of action" in that section do not mean the whole cause of action. **HILLS v. CLARK** 14 B. L. R., 367; 23 W. R., 63

118. ——— *Place of performance of contract—Suit for price of seed.*—Plaintiff delivered to the defendant at the latter's factory at Cossipore fifty maunds of indigo seed. It was agreed that payment should be made at plaintiff's place of business within the limits of the Munsif's Court at Krishnagar. *Held* that the latter Court had jurisdiction to entertain a suit for the price of the seed. **HURRI MOHUN MULLICK v. GOBURDHUN DASS**

[3 C. L. R., 459]

119. ——— *Whole cause of action—Contract—Place of performance of contract where no stipulation in contract—Leave to sue under cl. 12 of Letters Patent.*—By a contract executed in Bombay on the 19th December 1885, the defendant promised to pay the plaintiff R9,152, of which amount the sum of R4,752 was to be paid by monthly instalments of R132 extending over a period of three years, and the remainder, viz., R4,400, in a lump sum at the end of the three years. It was provided that, in case of default being made in payment of any of the instalments, the whole of the amount then due should be paid forthwith. The plaintiff, alleging that the defendant had only paid eight of the instalments, brought this suit for the balance. The defendant, who did not dwell or carry on business in Bombay, pleaded (*inter alia*) that the High Court of Bombay had no jurisdiction, as the whole cause of action had not arisen in Bombay, and no leave to sue had been obtained by the plaintiff under cl. 12 of the Letters Patent. The written contract, which was admittedly executed in Bombay, contained no stipulation as to where the instalments or the final balance was to be paid. *Held* that, in the absence of stipulation in the contract itself, the intention of the parties to it was to guide the Court in determining the place of its performance. From the facts and acts of the parties it appeared that their intention was that payments under the contract should be made at Surat. The breach of contract consequently took place at Surat and not in Bombay, and the High Court of Bombay had no jurisdiction to try the suit, the plaintiff having omitted to obtain leave to sue under cl. 12 of the Letters Patent. In the case of an action on a contract the "cause of action" within the meaning of cl. 12 of the Letters Patent means the whole cause of action, and consists of the making of the contract and of its breach in the place where it ought to be performed. To give jurisdiction to the High Court of Bombay, the plaintiff must show that the contract was to be performed, and that its breach took place there. **DHUNJISHA NUSSEBWANJI v. FRODRE** I. L. R., 11 Bom., 649

JURISDICTION—continued.

2. CAUSES OF JURISDICTION—continued.

128. *Held* that it being, with reference to s. 178 of the Charter Act, an essential element in the plaintiff's case that the goods in question had been obtained from the plaintiff by fraud in Calcutta, part of the cause of action, and that K arose in Calcutta, so as to enable the Court, leave having been obtained under cl. 12 of the Charter, to entertain the suit against him. *KAMBER CHURN SARKAR v. GOPAL DATTA PAIRAI*. 1 L. R., 3 Cal., 284

129. *Legacy, Suit for—Place of residence of legatee out of town.* A suit for a legacy must be brought, not within the jurisdiction where the testator resided, but within the jurisdiction where the heir resides. *ASTORCROFT BROS. v. HUNTER CHURN NAY*. 18 W. R., 305

130. *Lost property—Property lost in one district and found in another.* A suit to recover property lost in one district and found in another must be instituted in the Court of the district in which it is found. *RAM PARTAB SINGH v. BHODANDEVI KHANDWAR*. 9 W. R., 580

131. *Maintenance, Suit for—Letters Patent, 1865, cl. 12.* The plaintiff's father left various properties partly within and partly outside Calcutta. The plaintiff instituted this suit, as an indigent and a widowed daughter, against the defendants for the recovery of her maintenance out of the estate inherited by them from her father, and prayed that her maintenance might be declared a charge upon the property situated within the limits of Calcutta. Some of the defendants lived within and some outside Calcutta. Leave was obtained under cl. 12 of the Letters Patent. It was held that, under the aforementioned circumstances, the High Court had jurisdiction to try the action. *MOXHODA DASSER v. NANLO LALL HALDAR*.

(1 L. R., 37 Cal., 555
4 C. W. N., 889)

132. *Malicious prosecution, Suit for—Letters Patent, 1865, cl. 12—Jurisdiction.* Where the plaintiff, in an action for malicious prosecution, alleged that the defendant had instituted criminal proceedings against him before the Magistrate of Moradabad, causing a warrant to be issued by the Magistrate, and having him arrested under that warrant in Calcutta, *Held* the whole cause of action did not arise at Moradabad; that part of the cause of action arose in Calcutta, so as to entitle the plaintiff, with leave of the Court, to bring an action in the High Court. *LEDDY v. JOHNSON*.

(8 B. L. R., 141)

133. *Misrepresentation—Information as to carriage of goods by railway.* Where the defendants at C were asked to obtain information from a railway company as to the cost of carriage of coal from R to C which they were about to sell to the plaintiff at C, and they did so communicating in good faith the result to the plaintiff, and the plaintiff was ultimately compelled to pay to the railway company a much larger sum than the defendant had represented, *Held*, assuming there was a right of suit, the cause of action must be held to

JURISDICTION—continued.

2. CAUSES OF JURISDICTION—continued.

have arisen at C, where the alleged representation must be deemed to have been made. *BENIGAL COAL COMPANY v. ELGIN COTTON COMPANY*.

(3 N. W., 13)

134. *Letters Patent, cl. 12—Suit to set aside decree of High Court on ground of misrepresentation.* It is not necessary to obtain the leave of the High Court under cl. 12 of the Letters Patent to sue to set aside a decree of that Court made upon a compromise to which the plaintiff has been induced by the misrepresentations of the defendant to agree, even when it appears from the pleadings that the defendant is outside the jurisdiction of the Court. *SOLOMON v. ANNOOL AZIZ*.

(4 C. L. R., 368)

135. *Money had and received, Suit for—Place of estate sold and place of receipt of money.* R, having a right to an estate in P, then in the hands of B, sold it to S. Contemporaneously with the sale, B and S by deed bound themselves in common to take all needful steps to obtain possession of the estate from B by a suit in the Supreme Court against B, recovered the estate and moneys profits which were paid to him in Calcutta. In a suit instituted in P by the representative of S against R for the amount so realized by him, it was held that the plaintiff was entitled to recover, and that the cause of action arose in P. *SHARODAPERSAD MOOKHERJEE v. BENIGAL INDIGO COMPANY*.

(1 Ind. Jur., N. S., 32)

136. *Money in Government Treasury—Suit for sum held in deposit by Government for collections made by it.* Where a suit was brought for the surplus collections of the proprietary profits of an estate made by Government during a period when it was held as Koork tahsil, and it appeared that the Terai District, within which the said estate was situated, had been several times transferred from the Bareilly Division, in which it originally lay, to that of Kumaon, and back again, but that at the time of the institution of the suit it was included within the Kumaon Division, and it further appeared that no portion of the collections in question were in deposit in the Bareilly Treasury, *Held* that the Bareilly Court had no jurisdiction to entertain the suit. *HEARSEY v. SECRETARY OF STATE FOR INDIA*.

(6 N. W., 47)

137. *Negotiable instruments—Suit on bill of exchange.* Where a bill of exchange was drawn at Banda, and made payable and dishonoured at Benares, and the defendant also had his dwelling at Banda, *Held* that the cause of action did not arise at Agra, merely on account of the bill of exchange having been sold at the latter place by a third party, purchaser from defendant. *KISHEN CHUND v. KISHEN LALL*.

(2 Agra, 123)

138. *Hundi—Whole cause of action—Letters Patent, cl. 12.* Where plaintiff brought an action to recover money paid by him in Calcutta, on hundis drawn by defendant beyond the local limits, but sent by him to Calcutta,

JURISDICTION—continued.**2. CAUSES OF JURISDICTION—continued.**

same I will pay you at the rate of eight annas in the rupee. This chitti is written 21st December 1884." The plaintiffs' munim handed the following letter to the defendant: "To Shah Dowlatrai Shriram at that auspicious place, Delhi. From the seaport (town) of Bombay, written by Ganeshdas Thakurdas, whose salutations of victory * * *, etc. Do you be pleased to read * * *. I have an account with Shali Fatechand Kanyalal Jugalkissan, wherein R are claimable by me. On account of those rupees I will receive payment from you at the rate of eight annas in the rupee. A chitti in respect thereof I have obtained in writing from you 21st December 1884." These letters were exchanged at Delhi, and the plaintiffs' munim then returned to Bombay. *Held* that the Court had jurisdiction. If the oral agreement between the defendant and the plaintiffs' munim were taken as the basis of the plaintiffs' claim, it was clear that part of the cause of action arose in Bombay, as payment to the plaintiffs was to be made in Bombay. The exchange of letters was a carrying out in part of the oral agreement. When that agreement was made, the defendant was under a legal obligation to pay the plaintiffs' claim upon the insolvent firm. The oral agreement varied the time, place, and mode of payment, as it was competent for the parties to vary them (Contract Act IX of 1872, ss. 73, 74). If the letters had varied the terms of the oral agreement, the latter would be modified by the later expressions of the will of the contracting parties; but they did not do so, and the oral agreement remained in force and unvaried. If, on the other hand, the letters were regarded as containing the contract, they were not of such a character as to exclude the proof, under s. 92 of the Evidence Act (I of 1872), of a separate oral agreement completely consistent with their terms, namely, that the payment they provided for should be made in Bombay. *Held* also that, having regard to the circumstances under which they were written, that a promise to pay in Bombay might fairly be inferred from the terms of the letters themselves. The defendant addressed the plaintiffs at Bombay from Delhi, and the plaintiffs addressed the defendant at Delhi from Bombay, and it might be concluded from this that the parties intended that the letters should have the same contractual effect as if they had been respectively written to and from the places to and from which they purported to be written. *Held* also that the fact that the debt due from the insolvent firm to the plaintiffs, which the defendant had agreed to satisfy, had been contracted in Bombay would not give the Court jurisdiction independently of the stipulation, oral or documentary, by the defendants to pay in Bombay. It would be necessary for the plaintiffs to prove the existence of such debt as showing the nature and extent of the defendant's promise, but the existence of the debt would not constitute a part of the plaintiffs' cause of action. **PRAGDAS THAKURDAS v. DOWLATRAM NANURAM**. I. L. R., 11 Bom., 257

145. *Leave to sue under cl. 12 of the Letters Patent, 1865—Amendment of plaint in cases in which leave to sue under cl. 12 is necessary—Part of cause of action arising*

JURISDICTION—continued.**2. CAUSES OF JURISDICTION—continued.**

outside the jurisdiction—Hundi, Suit on—Suit by drawee within the jurisdiction against the drawer outside the jurisdiction.—In suits for which leave to sue under cl. 12 of the Letters Patent, 1865, is necessary, the plaint cannot be afterwards amended. The grant of leave must be taken to relate to the suit as put forward in the plaint on which leave is endorsed by the Judge accepting it. The grant of leave under cl. 12 of the Letters Patent, 1865, is a judicial act which must be held to relate only to the cause of action contained in the plaint, as presented to the Court at the time of the grant. Such leave, which affords the very foundation of the jurisdiction, is not available to confer jurisdiction in respect of a different cause of action which was not judicially considered at the time it was granted. In respect of such a different cause of action, leave under cl. 12 cannot be granted after the institution of the suit; and therefore the Court cannot try such different cause of action, except in another suit duly instituted. In suits upon hundis drawn outside the jurisdiction upon drawees within the jurisdiction, part of the cause of action arises outside the jurisdiction, and leave to sue under cl. 12 of the Letters Patent, 1865, is therefore necessary for such suits. **RAMPURTAB SAMBUTHROY v. PREMSUKH CHANDAMAL**. I. L. R., 15 Bom., 93

In a later case the plaint was amended by the addition of another defendant after the leave to sue had been granted, and an appeal by the original defendant from that order was dismissed. **FOOLIBAI v. RAMPRATAP SAMBATHAI**

[I. L. R., 17 Bom., 466]

146. *Suit on hundi—Endorsement by payee.*—A hundi, drawn at Benares on the drawer's firm at Bombay in favour of a firm at Mirzapur and Calcutta, was endorsed at Calcutta by the payee to a firm at Calcutta, and dishonoured by the drawer's firm at Bombay. In a suit brought in Calcutta by the endorsee to recover the value of the hundi, the defence was raised that the Court had no jurisdiction to entertain the suit. *Held* that, the endorsement having taken place in Calcutta, part of the cause of action arose in Calcutta, so as to give the Court jurisdiction. **Kellia v. Fraser**, I. L. R., 2 Calc., 445, and **Daya Narain Tewary v. Secretary of State**, I. L. R., 14 Calc., 256, approved. **ROGHONATH MISSEER v. GOBINDNARAIN** [I. L. R., 22 Calc., 451]

147. *Letters Patent, High Court, cl. 12—Suit date—Dishonour by non-acceptance.*—On the 14th April 1889, the defendant at Gwalior drew a hundi for Rs. 2,500 on his firm at Bombay in favour of D, payable forty-five days after date. It was subsequently endorsed at Gwalior by D to the plaintiff at Cawnpore, who sent it to the Bank of Bombay at Bombay for collection. It was to become payable on the 1st June 1889, but on the 23rd April 1889 the Bank presented it to the defendant's firm at Bombay for acceptance, which was refused. The Bank thereupon returned it to the plaintiff at Cawnpore, and

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very according to the promise is required to make it complete. WINTER & HOUNS. I Mad, 203

promised to pay at Gladue. Remarks on the
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term "cause of action." *Gopi Krishna Ghorasani v. Nil Kumar Banerjee*, 18 B. L. R. 461 (1942) *Muhammad Abdul Kadar v. E. I. Railway Co.*

L. R. & J. M. & J. D., 370, and Lawrence & J. D. 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

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Nash
Zorawar Mall
I W. H. P. C., 35, 38 Moore's I A, 281
156. Tellers Patent.
ci. 12—Suit against non resident foreigners.
plaint and the defendants at Secunderabad, in
the territories of the Nizam, for a partnership in a

within the original trial jurisdiction of the High Court, and the leave of the Court to bring the suit having been obtained under s. 22 of the Letters Patent of 1865, that the Court had jurisdiction to interfere the suit. *Itid* also that the objection to entering the suit. *Itid* also that the

JURISDICTION—continued.

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jurisdiction of the Court was not affected by the circumstance that the defendants were non-resident foreigners. *BAYAH MEAH SAIB v. KHAJEE MEAH SAIB* 4 *Mad.*, 218

157. ———— *Letters Patent, High Court, cl. 12—Part of cause of action arising on jurisdiction—Death of partner—Subsequent recovery of assets by surviving partner—Suit by administrator of deceased partner against surviving partner for recovered assets—Suit for partnership account.*—In 1889 one *H*, a widow and a partner in a firm carrying on business in partnership with two persons, *viz.*, *G* and *B* (defendants Nos. 1 and 2), in Sind and at Behrin in the Persian Gulf, died, and the partnership was then dissolved. *H* had no children, but it was alleged that she had adopted one *P*, the brother of the second defendant. On the 13th February 1890, the guardian of one *K*, a minor (*H*'s husband's nephew), applied to the High Court of Bombay for letters of administration to her estate, alleging that *K* was her heir and next of kin. A caveat was filed by her father and others, in which they denied that *K* was her heir, and alleged that *P* had performed her funeral ceremonies. The matter came on as a suit on the 19th February 1894, when an order was made, without prejudice to any of the questions raised by the issues, dismissing the application and ordering letters of administration to *H*'s estate to issue to the Administrator General of Bombay. Letters of administration were accordingly granted to him on the 30th March 1894. In the meantime, however, *viz.*, on the 12th April 1893, *B* (defendant No. 2) had filed three suits in the High Court of Bombay, in the name of himself and *G* (defendant No. 1), as surviving partners of *H*'s firm, to recover certain debts due to that firm. Disputes subsequently arose between *B* and *G*, and by a consent order of the 22nd July 1893 it was ordered that any moneys recovered in the said three suits should be paid over to a receiver (defendant No. 3), to be held by him until further order. On the 1st August 1893, consent decrees were passed in the above three suits for a total sum of Rs. 335, which was forthwith handed over to the receiver. On the 22nd April 1894, the suit was filed by the Administrator General of Bombay as administrator of *H* appointed as above stated. He claimed to recover the whole sum paid to the receiver, alleging that the first and second defendants as her partners were largely indebted to the firm, and that the money really belonged to her estate. He prayed that the receiver might be directed to pay over the money to him, and that, if necessary, the partnership accounts should be taken. The second defendant (*inter alia*) pleaded that the suit was one for partnership accounts, and was barred by limitation, and also that the High Court of Bombay had no jurisdiction to try it. *Held* that the Court had jurisdiction to hear the suit. The cause of action alleged was that the second defendant was endeavouring, under cloak of his position as surviving partner, to get into his hands a sum of money

JURISDICTION—continued.

2. CAUSES OF JURISDICTION—continued.

within the jurisdiction of the Court, with a view to deprive the representatives of his deceased partner of it, and to employ it for his own purposes. That was, at all events, part of the cause of action, and leave to sue had been obtained under cl. 12 of the Letters Patent, 1865. *RIVETT-CARNAO v. GOOUL-DAS SOBHANMULL* I L. R., 20 *Bom.*, 15

Affirmed by the Privy Council in, *BHAGWANDAS MITHARAM v. RIVETT-CARNAO*

[I. L. R., 23 *Bom.*, 544
3 C. W. N., 186

158. ———— *Principal and agent—Principal residing out of jurisdiction.*—*Held* that the Court at Furruckabad had no jurisdiction to entertain a suit against principals residing elsewhere, brought by the agents at Furruckabad. *KHOOSHAL CHUND v. PALMER* 1 *Agra*, 280

159. ———— *Registration—Suit to compel registration—Registration Act, 1864, s. 21—Civil Procedure Code, 1869, s. 5.*—Defendant executed in favour of plaintiff at Combaconum, in the zillah of Tanjore, a deed of mortgage of lands situated at a place within the jurisdiction of the District Munsif of Perambalur, in the Trichinopoly zillah. The deed, to make it enforceable, required registration, the place of registry (from the situation of the lands) being Perambalur. Plaintiff appeared at the registry office, but defendant did not. In consequence, the Sub-Registrar refused to register the deed. The present suit was brought to compel defendant to join in registering it. The District Munsif of Perambalur dismissed the suit upon the ground that the cause of action did not arise within his jurisdiction, but at Combaconum. The Civil Judge confirmed this decision, as he found that the defendant was a permanent resident of Combaconum. Upon special appeal, —*Held*, reversing the decree of the Civil Judge, that as s. 21 of the Registration Act (XVI of 1864), which governed this case, rendered it necessary that the deed should be registered in Perambalur, the defendant was under an obligation to plaintiff to get the document registered at that place; that the breach of the obligation was the cause of action, and that consequently the Court at Perambalur had jurisdiction, as it was the place of the fulfilment of the obligation. *SAMI AYYANGAR v. GOPAL AYYANGAR* 7 *Mad.*, 176

160. ———— *Release—Suit to set aside release—Letters Patent, 1865, cl. 12.*—The plaintiff, resident in Calcutta, sued *H*, resident in Bombay, but carrying on business by his gomastah in Calcutta, and others resident in Bombay, to set aside a release executed in Calcutta of his interest in certain property situate in Bombay, on the allegation that it had been obtained from him by false representations made by *H*. The plaintiff prayed that the release might be declared void and cancelled; that a certain inventory and account relating to the said property, which the plaintiff alleged he had been induced to file in Bombay by the false representations of *H*, might be declared not binding on the plaintiff; for an account; and for the appointment of a receiver. *Held* that

JURISDICTION—continued.

3. SUITS FOR LAND—continued.

following effect : That the defendant's share in the partnership property should stand charged with the payment of a certain sum found to be due by him to the plaintiff, and that the defendant should execute a mortgage of his share to the plaintiff as security for such payment ; that the partnership should be dissolved on certain terms, and that the tea garden at Darjeeling should be sold in Calcutta. In an application under s. 327, Act VIII of 1859, to file the award,—*Held*, affirming the decision of the Court below, that the High Court at Calcutta had jurisdiction to file the award. S. 327 gives jurisdiction to file an award to any Court in which a suit in respect of the subject-matter of the award might be instituted. A suit in respect of the subject-matter of this award would not be a suit for land, but a suit in which, by reason of the execution of the deed of partnership in Calcutta, a part of the cause of action arose there ; such a suit could, with leave, have been instituted in the High Court : that Court, therefore, had jurisdiction to file the award. *KELLIE v. FRAZER*

[I. L. R., 2 Calc., 445

170. — Claim to attached property.—*Claim under Civil Procedure Code, 1859, s. 246.*—A claim to property under s. 246, Act VIII of 1859, is virtually a suit for land. *SAGORE DUTT v. RAMCHUNDER MITTER* . . . 1 Hyde, 136

171. — Foreclosure.—*Lex loci rei sitæ.*—When land forms the subject-matter of the suit, the *lex loci rei sitæ* applies. A suit for foreclosure is a suit for land. *BLAQUIERE v. RAMPHONE DOSS* . . . Bourke, O. C., 319

172. — Foreclosure of property out of jurisdiction.—*Practice.*—A suit for foreclosure of land out of the jurisdiction is a "suit for land," and cannot be brought in the High Court at Calcutta on the ground that defendant is living in Calcutta. In such cases the Court will return the plaint. *BIBEE JAUN v. MAHOMMED HADEE*

[1 Ind. Jur., N. S., 40

173. — Cause of action.—*Property out of jurisdiction.*—A suit by a mortgagee for foreclosure must be brought in the district where the land is. In like manner, a suit by a mortgagee who is entitled, not to a foreclosure, but to a decree to establish his charge and for the sale of the specific property charged, must be brought in the Court within the legal limits of whose jurisdiction the property is. The remedy against the borrower personally under a mortgage-deed must be pursued in the district in which the cause of action arose. But when the object of the lender is to proceed to enforce his charge against the property (such property being immoveable), his suit must be brought in the district where the property is situated. *BULDEO DOSS v. MOOL KOOR* . . . 2 N. W., 19

174. — Portion of property in mofussil.—Where a plaintiff prayed for foreclosure of a mortgage in the English form of certain land situated partly in Calcutta and partly in the mofussil, and for an account,—*Held* that leave to sue having been obtained under cl. 12 of the Letters

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3. SUITS FOR LAND—continued.

Patent, the Court had power to make a decree with respect to the whole of the property. *BANK OF HINDUSTAN, CHINA, AND JAPAN v. NUNDOLALL SEN* . . . 11 B. L. R., 301

175. — Letters Patent 1865, cl. 12.—*Foreclosure, Suit for.*—A suit for foreclosure is not a suit for land within the meaning of cl. 12 of the Letters Patent, 1865, and the High Court of Bombay on its original side has jurisdiction to entertain such suits, although the property in question is situate outside the town and island of Bombay. *Holkar v. Dadabhai C. Ashburner, I. L. R., 14 Bom., 353*, followed. *SORABJI CURSETJI SEET v. RATTONJI DOSSABHOY* . I. L. R., 22 Bom., 701

176. — Injunction—*Civil Procedure Code, s. 5*—*Suit in personam—Suit for injunction to restrain nuisance.*—The plaintiffs, the owners and occupiers of a house and premises in Howrah, sued for an injunction to restrain a nuisance caused by certain workshops, forges, and furnaces erected by the defendants, and for damages for the injury done thereby. The defendants were a railway company incorporated under an Act of Parliament for the purpose of making and maintaining railways in India, and by an agreement (entered into under their Act of Incorporation) between them and the East India Company, they were authorized and directed to make and maintain such railway stations, offices, machinery, and other works (connected with making, maintaining, and working the railways) as the East India Company might deem necessary or expedient. The workshops complained of were erected in 1867, under the sanction of the Bengal Government, on land purchased by the Government in 1854 for the purposes of the railway under Reg. I of 1822 and Act XLII of 1850, and which had been made over to the defendants. *Held* that the suit was in personam, and not a suit "for land or other immoveable property" within the meaning of cl. 12 of the Letters Patent, 1865, or of s. 5 of Act VIII of 1859. *RAJMOHUN BOSE v. EAST INDIAN RAILWAY COMPANY*

[10 B. L. R., 241

177. — Letters Patent, cl. 12.—*Suit to restrain working of mine.*—In a suit brought against the owners of a mine adjacent to a mine belonging to the plaintiffs, the plaintiff alleged that a certain boundary line existed between the two mines, and prayed for a declaration that the boundary line was as alleged, and that the defendants might be restrained by injunction from working their mine within a certain distance from such boundary line. The defendants in their written statement disputed the plaintiffs' allegation as to the course of the boundary line. The mines were situated out of the jurisdiction of the High Court, but both the plaintiffs and defendants were personally subject to the jurisdiction. *Held* that the suit was a suit for land within cl. 12 of the Letters Patent, and therefore one which, the land being in the mofussil, the Court had no jurisdiction to try. On the facts stated in the plaint and before the filing of the defendants' written statement, the Court granted an

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3 SURFS FOR LAND—continued

IN THE MATTER OF THE PETITION OF LESLIE
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local limits of whose jurisdiction the mortgagee has no jurisdiction to interfere, to property situated outside the local limits of its jurisdiction. *Wynn v. L. R., 17 Bom., 670*

183 _____ Letters Patent,
High Court of Chancery—Suit for land out of jurisdiction—Suit to declare interest on land—Suit to have

and I prayed that the mortgage contract might be declared void and the mortgage set aside and cancelled or for damages — \$27,771.81 that so far as the suit sought to discharge the land from the obligation imposed on it by the mortgage. It was a suit for land in part of 12 of the tracts, Parkers, and the land being situated outside the local limits of the jurisdiction of the Court had no jurisdiction to the effect of HAYES CLEVERLEY THAT CUMMINS v. KIRK & COMPANY NO. 1 T. H. 19 CAL. 383 note

184. — Suit to recover mortgage debt by sale of mortgaged property and

for the jurisdiction — A suit for the recovery of a mortgage debt by the sale of the mortgaged property is not a suit for land within the meaning of a 6 of the Code of Civil Procedure. A Court may decree the sale of mortgaged immovable property, though situated beyond its jurisdiction. **TEKONA HASTATI KASAB & HANUMANT VALAD V. ANILK. 9 Bom, 13**

188 ——— Suit for partition where mortgagor are within, and immortals outside, the jurisdiction—Practice—See to me

The fact that his suit included a

3. SUITS FOR LAND—continued.

CONFIDENTIAL - BEHAGAT COURT COMPLAINANT
[T. L. R., 1 Case, 85]

and declared as a share on the said estate she paid also for an account and the appointment of

property within the jurisdiction of the court as necessary to satisfy the injunction, there was no necessity for its being declared to be a charge on the Calcutta property. *Madna Hukar v. The Commissioner of Calcutta*. 178. Dacca.

is situated, even though the cause of action has not arisen there and the defendants reside elsewhere.

100.
mortgage lien on land — A suit for
of a mortgage lien and for a decree
due be realized from the property
movable property, and must be brought
within the jurisdiction of which the
ated. *Amber Brooy & Damer* *Plaintiff*
[16 W. R. 287]
[23 W. R. 123]
MANAGED KINETEL & SONA HOUSE

WAXPOND KUTLER & SONS MOORE
[23 W. H. 123]

being a way de sold, is a suit for land within the mean-
ings of a 6 of Act III of 1859, and is rightly
brought in the Court of the district within which the

JURISDICTION OF CIVIL COURT —continued.

25. RENT AND REVENUE SUITS—continued.

246. — Question of title arising on an application for partition, how to be determined.—*N.-W. P. Land Revenue Act (XIX of 1873), s. 113.*—If a Revenue Court in disposing of an application for partition determines a question of title, it must, in so doing, act in conformity with the provisions of s. 113 of Act XIX of 1873. If it disposes of the application otherwise than in the manner contemplated by s. 113, its proceedings are *ultra vires*, and will not debar the parties from suing in a Civil Court for a declaration of their right to partition. *NASRAT-ULLAH v. MUJIB-ULLAH*. I. L. R., 13 All., 309

247. — Suit after partition on reference to arbitration—*Co-sharers in sir land—Determination of rights.*—An agreement to refer to arbitration the partition of a mehal provided that, if sir land belonging to one co-sharer were assigned to another co-sharer, the co-sharer to whom the same belonged should surrender it to the co-sharer to whom it might be assigned. The arbitrator assigned certain sir land belonging to the defendants in this suit to the plaintiffs. The partition was concluded according to the terms of the award. The defendants refused to surrender such land to the plaintiffs. The plaintiffs distrained the produce of such land, alleging that it was held by certain persons as their tenants and arrears of rent were due. The defendants thereupon sued the plaintiffs and such persons in the Revenue Court, claiming such produce as their own. The Revenue Court held that such distress was illegal, as such land was in the possession and cultivation of the defendants as occupancy tenants under s. 125 of Act XIX of 1873. The plaintiffs subsequently sued the defendants in the Civil Court for possession of such land, basing such suit on the partition proceedings. *Held* that the decision of the Revenue Court did not debar the Civil Courts from determining the rights of the parties under the partition, and such suit was cognizable in the Civil Courts. *ABHAI PANDEY v. BHAGWAN PANDEY*. I. L. R., 3 All., 818

248. — Suit for possession of land assigned on condition of service—*Resumption and assessment of rent—N.-W. P. Land Revenue Act (XIX of 1873), ss. 79 and 241.*—The plaintiffs sued for possession of certain land in a village alleging that it had been assigned to a predecessor of the defendant to hold so long as he and his successors continued to perform the duties of village watchmen, and that the defendant had ceased to perform those duties and was holding as a trespasser. The defendant alleged that he and his predecessors had held the land rent-free for 200 years, and that he held it as a proprietor. *Held* that the plaintiffs' claim was not one to resume such a grant or to assess rent on the land of which a Revenue Court could take cognizance under ss. 30 and 95, cl. (c), of Act XVIII of 1873, or ss. 79 and 241, cl. (h), of Act XIX of 1873, but one which was cognizable by the Civil Courts. *PURAN MAL v. PADMA*

[I. L. R., 2 All., 732]

JURISDICTION OF CIVIL COURT —continued.

25. RENT AND REVENUE SUITS—continued.

249. — *Resumption of rent-free grant—Act XII of 1881, ss. 30, 95, cl. (c)—Act XIX of 1873, s. 241, cl. (h).*—A zamindar brought a suit to recover possession of certain land in the village which was held by the defendants rent-free, in consideration of rendering services as *khra-patis* on the ground that he was entitled as zamindar to dispense with their services, and that therefore they no longer possessed any right to hold the land. The claim was resisted by the *khra-patis* on the ground that for many years they had been in possession of the land as *muafi*-holders. *Held* that the dispute so raised was a matter which could form the subject of an application to resume a rent-free grant within the meaning of s. 30 of the N.-W. P. Rent Act (XII of 1881), and that the cognizance of the suit by the Civil Court was therefore barred by cl. (c) of s. 95 of that Act, and that for similar reasons the Civil Court under cl. (h) of s. 241 of the N.-W. P. Land Revenue Act (XIX of 1873) could not exercise jurisdiction over the matter of the suit. *TIKA RAM v. KHUDA YAR KHAN*. I. L. R., 3 All., 191

250. — Suit for possession of rent-free and revenue-free tenures—*Assessment and settlement of revenue-free land—Act XIX of 1873 (N.-W. P. Land Revenue Act), s. 241.*—Certain land was settled with the defendants in this suit. The Settlement Officer having declared that the plaintiffs in this suit had acquired a proprietary right to such land under the provisions of s. 82 of Act XIX of 1873 and were entitled to hold it rent-free, the defendants applied to the Settlement officer to assess such land and to settle it with the plaintiffs as the persons in actual possession as proprietors. This having been done by the settlement officer, the plaintiffs sued the defendants to be maintained in possession of such land free of revenue, and for the cancellation of the Settlement officer's order. *Held* that, under s. 241 of Act XIX of 1873, the suit was not cognizable in the Civil Courts. *ZALIM SINGH v. UJAGAR SINGH*. I. L. R., 3 All., 367

251. — Suit to set aside Collector's order for contribution—*Malikana—Government revenue—N.-W. P. Land Revenue Act (Act XIX of 1873), s. 241, cl. (b).*—At the settlement of a certain village, a *malikana* allowance of 10 per cent. on the revenue was reserved for C, the *talukdar* to whom the village belonged. At the same settlement, the *muafi*-holding of A in the village was resumed, and assessed to revenue; but A refused to engage for it, and it was therefore merged for revenue purposes in the mehal of the village, though still held by A. In 1872, A obtained in the Civil Court a decree by which he was declared to be the proprietor of his holding, and to be entitled to engage for it separately; and thereupon the Collector constituted the holding a separate mehal by causing a *khewat* to be prepared, and fixing the proportion of the revenue assessed upon the entire mehal which the *muafi*-holding should bear. Subsequently the zamindars of the village applied to

JURISDICTION OF CIVIL COURT

—continued.

25. RENT AND REVENUE SUITS—continued.

Inasmuch as that section refers to grants for holding land exempt from the payment of rent alluded to in s. 10 of Regulation XIX of 1793, and that Regulation, assuming it to refer to grants free from payment of rent as well as of revenue, contemplated grants not only free from payment of rent in cash or kind, but free from payment of anything in lieu thereof. A tenure such as in the present case, where the land was land originally paying rent in cash, and where the cash rent was exchanged for rendition of services, is not a rent-free grant within the meaning of the Regulation, nor consequently of s. 30 of the Rent Act. *Mutty Lall Sen Gywal v. Deshkar Roy, B. L. R., Sup. Vol., 774: 9 W. R., 1, and Puran Mal v. Padma, I. L. R., 2 All., 732*, referred to. *Per MAHMOOD, J.*—The services connected with the grant in this case did not constitute "rent" within the meaning either of the N.-W. P. Rent Act or of the N.-W. P. Land Revenue Act (XIX of 1873), and the word "render" in s. 3 of the former Act does not include or imply the rendering of services or labour. The word "rent" is probably used as the equivalent of the Hindustani words *lagan* or *poth* representing the compensation receivable by the landlord for letting the land to a cultivator, and s. 3 of the Rent Act, where it uses the expressions "paid, delivered, or rendered," must be taken to refer respectively to rent paid in cash, to rent delivered in kind, and to rent rendered by appraisalment or valuation of the produce. The grant in the present case was a rent-free grant of the nature of *chakran* or *chakri*, i.e., service tenure, to which s. 41 of the Regulation VIII of 1793 related. The incidents of the tenure would be governed by s. 30 of the Rent Act and ss. 79-84 of the Land Revenue Act, being matters outside the jurisdiction of the Civil Court. The scope of s. 10 of Regulation XIX of 1793 is not limited to permanent rent-free grants, and the present suit was in respect of a matter falling within s. 95, cl. (c), of the Rent Act, and "provided for in ss. 79 to 89, both inclusive," of the Land Revenue Act, within the meaning of s. 241, cl. (b), of the latter Act. *Puran Mal v. Padma, I. L. R., 2 All., 732; Tika Ram v. Khuda Yar Khan, I. L. R., 7 All., 191; and Forbes v. Meer Mahomed Tuquee, 13 Moore's I. A., 438*, referred to. *WARIS ALI v. MUHAMMAD ISMAIL*

[I. L. R., 8 All., 552]

(d) OUDE.

256. — Suit for partition and account of talukhdari estate—*Oude Rent Act (XIX of 1868)*, s. 83, cl. 15, s. 106.—In a suit commenced in 1865 by a member of a joint family for the declaration of his rights in a talukhdari estate, partition not being claimed, the order of Her Majesty in Council (1879) directed that the talukhdar should cause and allow the villages forming the talukhdari estate and the proceeds thereof to be managed and applied according to the trust declared in favour of the members of the family. The plaintiff in that suit afterwards obtained entry of his name as a co-sharer in the villages in the register kept under

JURISDICTION OF CIVIL COURT

—continued.

25. RENT AND REVENUE SUITS—concluded.

Act XVII of 1876, s. 56, and then brought the first of the present suits for his share upon partition, both in that estate as it stood in 1865 and also with the addition of villages since acquired out of profits claiming an account against the talukhdar. The latter alleged, among other defences, that the talukhdari estate was impartible, and brought a cross-suit to establish this, and also that it was held by him according to the rule of primogeniture, the right of other members of the family being only to the profits. *Held* that the provisions of the Oudh Rent Act (XIX of 1868), s. 83, cl. 15, and s. 106, precluding proceedings in the Civil Court, might be applicable to the proceeds of the villages forming the original estate, the claimant having been recorded in the revenue records as a shareholder therein, but could not be applied to the rest of the joint estate, and the Civil Court therefore had jurisdiction. *PURAN MAL v. JOWAHIR SINGH . I. L. R., 14 Cal., 493*
[I. R., 14 I. A., 37]

26. REVENUE.

257. — Suit to try liability to public revenue on land—*Wrongful acts by executive officer of Government*.—The Civil Courts have jurisdiction to entertain suits brought to try questions of liability to the public revenue assessed upon land. Where a suit is brought for alleged wrongful acts by an executive officer of Government, the circumstance that the acts complained of were done in enforcing payment of a revenue assessment sanctioned by Government does not, *per se*, preclude the jurisdiction of the Court to entertain the suit. But acts done by Government through its executive officers, not contrary to any existing right, according to the laws administered by the Municipal Courts, although they may amount to grievances, would afford no cause of action cognizable by the Civil Courts. *UPPU LAKSHMI BHAYAMMA GARU v. PURVIS 2 Mad., 167*

258. — Suit against officers of sea customs for act done without jurisdiction—*Revenue, Matter concerning*—53 Geo. III, c. 155, ss. 99 and 100—*Mad. Reg. IX of 1803*, s. 55.—*Per INNES and KERNAN, JJ. (dissentient THE CHIEF JUSTICE)*—The High Court of Madras has jurisdiction to try original suits against revenue officers for acts *ultra vires* done in their official capacity. The provision of the Letters Patent of the late Supreme Court, whereby such suits were excepted from the jurisdiction of the Supreme Court, has not been continued by the Letters Patent of the High Court so as to except such suits from the original jurisdiction of the High Court, but has been impliedly repealed by those Letters Patent. *Per KERNAN, J.*—The said provision was repealed by 59 Geo. III, c. 155, ss. 99 and 100, except as to land revenue. *Per INNES, J., contra. Per THE CHIEF JUSTICE and INNES, J.*—The District Court of Chingleput continued down to the year 1876 to have jurisdiction under Madras Regulation IX of 1803, s. 55, in suit

certain orders made by the Collector in the matters of the Collector, and that the Court not having direct jurisdiction to proceed to set aside the Collector's order or an interference of law, and that the Civil Court had jurisdiction to entertain a suit by P to restrain him to the possession of the land which fell within the partition made and awarded by the Deputy Collector accepting it. *Dezart v. Dunn*

But for extra land after partition by revenue authorities—*see XIX of 1863, s. 63—N. W. P. Land Revenue Act (XIX of 1873), s. 135*

partition by revenue authorities—*see XIX of 1863, s. 63—N. W. P. Land Revenue Act (XIX of 1873), s. 135*

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partition by revenue authorities—*see XIX of 1863, s. 63—N. W. P. Land Revenue Act (XIX of 1873), s. 135*

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partition by revenue authorities—*see XIX of 1863, s. 63—N. W. P. Land Revenue Act (XIX of 1873), s. 135*

partition by revenue authorities—*see XIX of 1863, s. 63—N. W. P. Land Revenue Act (XIX of 1873), s. 135*

JURISDICTION OF CIVIL COURT —continued.

27. REVENUE COURTS—continued.

obtain a division of the lands of an estate paying revenue to Government, the suit is not maintainable in a Civil Court. *DOORGA KRIPA ROY v. MOHESH CHUNDER ROY* . . . 15 W. R., 242

268. ——— Suits for partition of estates paying revenue to Government—*Beng. Reg. XIX of 1814, s. 3—Apportionment of revenue.*—Regulation XIX of 1814, s. 3, which requires that the partition of estates paying revenue to Government should be executed under the supervision of the Collector, applies only where there is a revenue payable to Government, which must be apportioned when a division of the estate is made. It does not apply where in making a division of the property it is unnecessary to apportion the revenue, it being already apportioned and payable by each of the owners of each of the parts of the original estate. A suit for partition in such a case may be entertained by the Civil Courts. *SHAMA SOONDUREE DEBIA v. PURES NARAIN ROY* . . . 20 W. R., 182

269. ——— Suit to set aside partition under *Beng. Reg. XIX of 1814* and for re-distribution of shares in estate.—The plaintiffs and defendants were owners of an undivided estate. Besides their share as part-owners, the plaintiffs held some of the estate as tenants and some as purchasers from some of their co-sharers in the estate. The whole estate was partitioned under Regulation XIX of 1814, and on such partition the lands which the plaintiffs held as tenants and as purchasers were allotted to co-sharers other than those under whom the plaintiffs held or from whom they purchased. In a suit by the plaintiffs for declaration of their title to those lands and for a re-distribution of the shares,—*Held* that the Court had no jurisdiction to entertain a suit to alter a partition effected by the Revenue authorities. *SHARAT CHUNDER BURMON v. HUGOBINDO BURMON* . . . I. L. R., 4 Calc., 510

RADHA BULLUBH SINGH v. DHERAJ MARTA CHAND . . . 2 W. R., Mis., 51

270. ——— Suit by allottee at private partition to stay proceedings and have his possession confirmed—*Batwara—Proceedings under Beng. Reg. XIX of 1814—Partition by private arrangement.*—An allottee under a private partition sued to stay subsequent proceedings brought under Regulation XIX of 1814 and to have his possession confirmed. The defendants objected to the suit being heard by the Civil Court, no proceedings having first been instituted before the revenue authorities. *Held* that the question whether the Collector would have brought the lands to partition, depended upon whether they were held "in common tenancy;" if they were not so held, the Collector would be only competent to make an assignment of the revenue in proportion to the several portions of the land held by the shareholders, and the Civil Court was entitled to adjudicate on the plaintiff's claim to be in possession of lands as comprising his share in the estate, and, on his succeeding in proving his claim, to declare

JURISDICTION OF CIVIL COURT —continued.

27. REVENUE COURTS—continued.

that those lands belonged to his divided share. *JOYNATH ROY v. LALL BAHADUR SINGH*

[I. L. R., 8 Calc., 123; 10 C. L. R., 146]

271. ——— Suit to establish shares after rejection of portions.—Where the Collector directs that a separate account should be opened with the co-sharer of an estate on his application, and his share is found not to be such as he states it to be, the co-sharers are at liberty to bring a suit in the Civil Court to establish the extent of their shares, in the event of the Collector under the *batwara* law rejecting their application for a division of their specific shares. *KHEDOO THAKOOR v. BHUGWUT LALL*

[16 W. R., 9]

272. ——— Suit for partition of lands excluded by Collector.—On partition of a certain *mehal*, lands belonging thereto were excluded by the Collector. It being afterwards satisfactorily found that such lands really belonged to the *mehal* and ought not to have been so excluded, it was held that a suit would lie in a Civil Court for partition of the excluded lands on the basis of the former partition. *Sree Misser v. Crowdy*, 15 W. R., 243, distinguished. *KRISHNO KUMAR BAIKAK v. BHIM LALL BAIKAK*

[4 C. L. R., 38]

273. ——— Suit for declaration of right to share.—There is nothing in the *batwara* law or in any other regulation to prevent the Civil Court from entertaining a suit for a declaration of the plaintiff's right to a larger share than that recorded in his name in the paper of partition. *SPENCER v. PUHUL CHOWDRY*. *SPENCER v. KADIE BUKSH* . . . 6 B. L. R., 658; 15 W. R., 471

See AHMEDULLA v. ASHRUFF HOSSEIN

[8 B. L. R., Ap., 73 note]

274. ——— Suit for partition—*Revenue-paying estate—Partition—Civil Procedure Code (Act X of 1877), ss. 11, 265.*—Where one of several co-sharers, owners of a piece of land defined by metes and bounds and forming part of a revenue-paying estate, brings a suit for partition, in which he does not seek to have his joint liability for the whole of the Government revenue annulled, such suit is cognizable by the Civil Courts which have jurisdiction to determine the plaintiff's right to have his share divided and to make a decree accordingly. *CHUNDERNATH NUNDI v. HUR NARAIN DEB*

[I. L. R., 7 Calc., 153]

275. ——— Suit to have possession on private partition confirmed—*Declaration against jurisdiction of Revenue Court to partition—Specific Relief Act, 1877, s. 42.*—Certain proceedings having been instituted to obtain a *batwara* of an estate, the plaintiff, who was one of the co-sharers in the estate, filed a suit against the others for a declaration that certain plots, which were comprised in the estate, and which he alleged had been allotted to him on a private partition, were not liable to partition by the revenue authorities. The plaintiff also prayed for confirmation of his possession, and that

JURISDICTION OF CIVIL COURT

—continued.

27. REVENUE COURTS—continued.

283. ——— Suit to set aside order of Settlement Officer as to proportion of profits—*Beng. Reg. VII of 1822, s. 10, cl. 1.*—The plaintiffs, biswadars, sued to set aside the order of a settlement officer, which determined the proportion in which the profits arising out of the limitation of the Government demand should be divided between them and the talukhdar. *Held* that, it being under cl. 1, s. 10, Regulation VII of 1822, the function of the Governor General in Council to determine such proportion, the suit was not cognizable by a Civil Court. **JOGUL KISHORE v. RAMPERTAB SINGH**

[4 N. W., 129

284. ——— Suit in Civil Court for ejectment—*Refusal of tenant to accept settlement after enhancement, under Beng. Reg. VII of 1822, s. 14, of rent of lands in a town.*—Where the Collector has issued due notice of enhancement, under s. 14 of Regulation VII of 1822, of the jama of lands, situate in a town and subject to that Regulation, and, on failure by the tenant to accept a settlement at the revised rate, an action in ejectment has been brought, the Civil Court has no power to consider whether the new rate of assessment is reasonable or in any way to interfere with the amount of the revised jama as fixed by the Collector. **RAM CHUNPER BERA v. GOVERNMENT**

6 C. L. R., 365

285. ——— Suit to alter settlement—*Beng. Reg. VII of 1822, s. 15.*—Lakhirajdars whose lands have been resumed have the right, under s. 15, Regulation VII of 1822 (if not barred by limitation), to bring a civil suit to revise, annul, or alter a settlement made by the Collector, not only as against those who claimed the settlement before the revenue authorities, but against all who have claims. **BISHOROP HAZRAH v. DUMONTEE DEBIA**

[15 W. R., 537

286. ——— Partition of mehal—*Application by co-sharer for partition—Notice by Collector to other co-sharers to state objections upon a specified day—Objection raised after day specified by original applicant—Question of title—Distribution of land—N. W. P. Land Revenue Act (XIX of 1873), ss. 111, 112, 113, 131, 132, 241 (f)—Civil Procedure Code, s. 11.*—So far as ss. 111, 112, 113, 114, and 115 of Act XIX of 1873 are concerned, a Civil Court is the Court which has jurisdiction to adjudicate upon a question of title or proprietary right, either in an original suit in cases in which the Assistant Collector or Collector does not proceed to inquire into the merits of an objection raising such a question under s. 113 or on appeal in those cases in which the Assistant Collector or Collector does decide upon such questions raised by an objection made under s. 112. The remaining sections relating to partition do not provide for or bar the jurisdiction of the Civil Court to adjudicate upon questions of title which may arise in partition proceedings, or on the partition after the time specified in the notice published under s. 111. S. 132 is not to be read as making the Commissioner

JURISDICTION OF CIVIL COURT

—continued.

27. REVENUE COURTS—continued.

the Court of Appeal from the Assistant Collector or the Collector upon such questions, nor does s. 241 (f) bar the jurisdiction of the Civil Court to adjudicate upon them. Where, therefore, after the day specified in the notice published by the Assistant Collector under s. 111, and after an ameen had made an apportionment of lands among the co-sharers of the mehal, the original applicants for partition raised for the first time an objection involving a question of title or proprietary right, and this objection was disallowed by the Assistant Collector and the partition made and confirmed by the Collector under s. 131,—*Held* that the objection was not one within the meaning of s. 113, that the remedy of the objectors was not an appeal from the Collector's decision under s. 132, and that a suit by them in the Civil Court to establish their title to the land allotted to other co-sharers was not barred by s. 241 (f), and with reference to s. 11 of the Civil Procedure Code was maintainable. **HABIBULLAH v. KUNJI MAL, I. L. R., 7 All., 447**, distinguished. **SUDAR v. KHUMAN SINGH, I. L. R., 1 All., 613**, referred to. **MUHAMMAD ABDUL KABIM v. MUHAMMAD SHADI KHAN I. L. R., 9 All., 429**

287. ——— Suit for partition—*Revenue-paying estate—Proceedings under Beng. Act VIII of 1876, s. 31, Effect of.*—The jurisdiction of the Civil Court in matters of partition of a revenue-paying estate is restricted only in questions affecting the right of Government to assess and collect in its own way the public revenue. *Held*, accordingly, that pendency of partition proceedings before the Collector under s. 31 of Bengal Act VIII of 1876 was no bar to a suit for a declaration that under a partial partition effected between the co-sharers a portion of land had been separately allotted to the plaintiff. **ZAHRUN v. GOWRI SUNKAR**

[I. L. R., 15 Calc., 198

288. ——— Suit for partition and possession of a share in a particular plot in a pottah—*Jurisdiction of Revenue Court—N. W. P. Land Revenue Act (XIX of 1873), ss. 135, 241 (f).*—A suit by a co-sharer in a joint zamindari estate for partition and possession of his proportionate share of an isolated plot of land is not maintainable in a Civil Court with reference to ss. 135 and 240 of the N. W. P. Land Revenue Act (XIX of 1873). **RAM DAYAL v. MEGU LAL, I. L. R., 6 All., 452**, distinguished. **ISMAIL v. KANHAI**

[I. L. R., 10 All., 5

289. ——— Partition by Civil Court of a portion of a revenue-paying estate—*Civil Procedure Code (Act XIV of 1882), s. 265—Revenue-paying estate, Partition of, into several revenue-paying estates.*—The meaning of s. 265 of the Code of Civil Procedure is that, where a revenue-paying estate has to be partitioned into several revenue-paying estates, such partition must be carried out by the Collector. **ZAHRUN v. GOURI SUNKAR, I. L. R., 15 Calc., 198**, approved. **DEBI SINGH v. SHEO LALL SINGH**

[I. L. R., 16 Calc., 203

JURISDICTION OF CIVIL COURT

27. REVENUE COURTS—continued.

315. — Suit to set aside sale for

rent, under s. 33, Act XI of 1859, to entertain a suit for the annulment of the sale. *Monoy Lait* Tawone v. Collector of Tinnore. 1 W. R., 356

312. — Suit for recovery of compensation awarded to a purchaser at a revenue sale—*Maintainability of such a suit—Bengal* Act VII of 1859, s. 2—A suit by a purchaser of an estate sold for arrears of government revenue for recovery of compensation awarded to him under s. 2 of Act VII (B. C.) of 1859, by a Commissioner who set aside the sale, is maintainable in a Civil Court. *Carter Lait v. Bhagwati Phosad*

313. — Suit for amount due under decree in rent suit.—*J. K. D. instituted a suit for amount due under decree in rent suit.* 17 W. R., 413

318. — Suit to recover land sold in execution of decree for rent.—A suit lay in the Civil Court for the recovery of land fraudulently sold in execution of a decree for rent, under Act X of 1799, against a party not in possession without suing specifically to set aside the sale. *Moore v. Meay Jay* 6 W. R., Act X, 60

324. — *SUGRAH DOSIAH* 6 W. R., Act X, 66

principle that the defendants should not be allowed to take advantage of their own fraud, it was decreed

JURISDICTION OF CIVIL COURT

27. REVENUE COURTS—continued.

316. — Suit for recovery of compensation awarded to a purchaser at a revenue sale—*Maintainability of such a suit—Bengal* Act VII of 1859, s. 2—A suit by a purchaser of an estate sold for arrears of government revenue for recovery of compensation awarded to him under s. 2 of Act VII (B. C.) of 1859, by a Commissioner who set aside the sale, is maintainable in a Civil Court. *Carter Lait v. Bhagwati Phosad*

317. — Suit to set aside rent decree after failure to appeal against it.—Where the Deputy Collector refused plaintiff's application to set aside a rent decree as passed against him upon a confession of judgment fraudulently filed by other

319. — Suit for amount due under decree in rent suit.—*J. K. D. instituted a suit for amount due under decree in rent suit.* 17 W. R., 413

324. — *SUGRAH DOSIAH* 6 W. R., Act X, 66

under the Act X decree. The parties to the compromise contemplated that the whole amount and interest should be realized only by process of execution to be issued out of the Revenue Court, which was to be delayed till a failure to pay an instalment had taken place. On the refusal of the Deputy Collector to issue execution for the amount of the debt, the plaintiff should have appealed to the Commissioner. *RAM MONAY DAS v. LAKEH NARAYAN HOY* [4 B. L. R., A. C., 207] S. C. *LUCKHARE NARAYAN HOY v. RAM MONAY DAS* 13 W. R., 181

JURISDICTION OF CIVIL COURT

—continued.

27. REVENUE COURTS—continued.

based on a fraudulent and fictitious kabuliati. The suit, though dismissed in the first Court, was decreed on appeal. *Held*, on special appeal, there being no evidence of the fraud on the record of the case, that the plaintiff was not entitled to a decree. *MURHAM BIBEY v. MAHOMED JAMAL* . 12 W. R., 380

301. — Suit to set aside order of Collector refusing to sell for arrears of rent. — A suit will not lie in the Civil Court against an order of a Collector refusing to hold a sale of a tenure for arrears of rent. *ROX HUREEKISHEN v. NURSING NARAIN* . 6 W. R., Act X, 63

302. — Suit to set aside order of Collector for registration of names. — A suit will not lie in the Civil Court to set aside an order by a Collector, made under s. 27, Act X of 1859, for the registration of the names of the defendants as shikmi talukhdars in the plaintiff's serishtu. *MAHOMED NOOR BUKSH v. MOHUN CHUNDER PODDAR* [6 W. R., Act X, 67

303. — Suit to establish claim to tenure not requiring registration—*Transfer of tenure not requiring registration in zamindari serishtu*—*Suit to establish claim to tenure*. — The sub-letting of a tenure does not necessarily make a raiyat a middleman. A raiyat who holds land under cultivation by himself, or by others taking under him, is not a middleman. His holding, therefore, was not one the transfer of which required registration under s. 27, Act X of 1859, and a suit will lie in the Civil Court in such a case by an unsuccessful claimant under s. 106 of that Act. *KAROO LALL THAKOOR v. LUCHMEERUT DOOGUR* 7 W. R., 15

304. — Suits to reverse summary awards for rent—*Question of title*. — In a suit brought by raiyats to reverse summary awards for rent, the Court, instead of deciding the question of title between the co-defendants, should merely determine to whom the plaintiffs have paid rent in past years, and their liability for the present year, in accordance with their past payments and the possession of the property evidenced thereby, leaving the contending co-sharers to settle the question of title in a separate suit brought for that purpose. *MUDDOOSOODUN ACHARY v. KISHORE HAZRAH* W. R., F. B., 36

305. — Suit to set aside order of Revenue Court directing ejectment—*Cause of action—Res judicata*. — A Revenue Court having ordered a tenant to be ejected under s. 10 of the Rent Recovery Act on the ground that he had refused to accept a pottah as directed by the Court, the tenant brought a suit in the Civil Court to set aside the order of the Revenue Court. *Held* that the suit would not lie. *RAGAVA v. RAJAGOPAL* [I. L. R., 9 Mad., 39

306. — Order of ejectment—*Suit to set aside such order—Madras Rent Recovery Act (Mad. Act VIII of 1865), s. 10*. — *Held* (DAVIES, J., diss.) that a tenant who has been

JURISDICTION OF CIVIL COURT

—continued.

27. REVENUE COURTS—continued.

ejected in pursuance of an order under Rent Recovery Act (Madras), s. 10, cannot maintain a suit to question the legality of that order. *RAGAVA v. RAJAGOPAL*, I. L. R., 9 Mad., 39, followed. *MANICKA GRAMANI v. RAMACHANDRA AYYAR*

[I. L. R., 21 Mad., 482

307. — Suit for money paid as rent—*Rent paid twice*. — The plaintiff sued to recover money which she had paid as rent to the zamindar, under a decree of the Revenue Court, after she had already paid her rent to his gomastah. *Held* that the suit was not cognizable by the Civil Court. *SAUDAMINI DASI v. THAKOMANI DEBI*

[3 B. L. R., Ap., 114

308. — Suit after decision of Revenue Court under Act X of 1859, s. 77—*Question of title*. — After a decision by a Revenue Court under s. 77, Act X of 1859, a Civil Court might determine the legal title to the rent; and, when determining such title, the Civil Court might also determine whether any rent which may have been lost to a party by the decision of the Revenue Court might not be reconced to him. *KEYAET HOSSEIN v. SHUMSHARE ALI* . 13 W. R., 458

309. — Enquiry into legality of proceedings of Collector—*Beng. Act VII of 1868—Certificate under s. 18*. — In a suit for arrears of rent it appeared that the plaintiff claimed under a pottah granted by the owner of land after a certificate had been issued against him out of a Collector's office under Bengal Act VII of 1868. The defendants had purchased the land in question at a sale held under the Act. The plaintiff alleged that the certificate had not been served, and that no notice before the certificate was issued was served upon the grantor as required by s. 18 of the Act; and he contended that, as the Collector's proceedings were irregular, the pottah was valid. The District Judge held that the Civil Court had no power to enquire into the Collector's proceedings, and must, as nothing appeared to the contrary, assume that they were regular, and dismissed the suit. *Held* that the Judge was bound to examine the proceedings of the Collector to see that they were legal and regular so as to constitute a legal bar to the grant of the pottah, and that the Judge was not at liberty to make any presumption in favour of their legality or correctness. *HEM LOTTA v. SREEDHONE BOROOA*

[I. L. R., 3 Calc., 771

310. — Suit for execution of decree in summary suit for rent. — A regular suit to enforce a decree obtained in a summary suit for rent, which the Revenue Court has refused to execute upon the ground that it has been satisfied, cannot be maintained in the Civil Court (STEER, J., dissenting). *ANANDA MAYI DASI v. PATIT PABUNI DASI* B. L. R., Sup. Vol., 18: W. R., F. B., 118

311. — Suit to enforce decree of Revenue Court. — As a general rule, a suit cannot be brought in a Civil Court to enforce a decree of a

JURISDICTION OF CRIMINAL COURT

● 2014年10月1日起，所有在境内销售的新车，其生产者或进口商都必须按照《国家环保标准》的要求，在车尾标注该车型的最低燃料消耗量(90公里/小时等速油耗、综合油耗、城市油耗和高速油耗)。

11 N. L. R. O. C., 15: 15 W. R. C., 71 note
11 W. R. C., 50 note

[2 B. L. R., 7. B., 21; 10 W. R. C., 43]

4. Special law, Effect of, on general jurisdiction--*Criminal laws of trust by trustee of temple*. *Mad. Pr.* VII of 1817--*Act XX of 1863*. The ordinary criminal law is not excluded by Regulation VII of 1817 or Act XX of 1863. *ANONYMOUS CASES*. I. L. R., 1 Mad., 55

1. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 841. 842. 843.

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7. Obstruction to right of way

11 W. R., 445

[3 B. L. F., A. C., 351:12 W. R., 275

D. — Offence committed on the high seas. 12 & 13 Vict., c. 95—21 & 24 Vict., c. 88.—An offence committed on the high seas, but within three miles from the coast of British India, as being committed within the territorial limits of British India, is punishable under the provisions of the Penal Code. The ordinary Criminal Courts of the country have jurisdiction over such offences by virtue of 12 & 13 Vict., c. 95, ss. 2 and 3, extended to India by 21 & 24 Vict., c. 88. Where certain inhabitants of the village of Maun in the Thana district sailed out in boats and pulled up and removed a number of fishing stakes lawfully fixed in the sea within three miles from the shore by the villagers of a neighbouring village, it was held that a Magistrate in

27. REVENUE COURTS—continued

27. REVENUE COURTS—continued

330 Suit to set aside sale when made without arrears of revenue being due

that there has been a material irregularity in publication or in conducting the sale *Prasad Bai v. Kalka*

331 Suit to question regularity of sale in execution under Collector's order

335 Sale in execution of decrees—*Civil Procedure Code* ss 911 313 320 329B, 329C, 329D—*Transfer of execution to Collector*

332 Discretion of Collector to set aside sale when arrears of revenue were due may be brought in the Civil Court without previous appeal to the Commissioner

336 *Prasanna Bai v. Collector of District*

333 Suit to set aside sale when made without arrears of revenue being due

337 *Prasanna Bai v. Collector of District*

334 Suit to set aside sale when made without arrears of revenue being due

338 *Prasanna Bai v. Collector of District*

335 Suit to set aside sale when made without arrears of revenue being due

339 *Prasanna Bai v. Collector of District*

336 Suit to set aside sale when made without arrears of revenue being due

340 *Prasanna Bai v. Collector of District*

337 Suit to set aside sale when made without arrears of revenue being due

341 *Prasanna Bai v. Collector of District*

338 Suit to set aside sale when made without arrears of revenue being due

342 *Prasanna Bai v. Collector of District*

339 Suit to set aside sale when made without arrears of revenue being due

343 *Prasanna Bai v. Collector of District*

340 Suit to set aside sale when made without arrears of revenue being due

344 *Prasanna Bai v. Collector of District*

341 Suit to set aside sale when made without arrears of revenue being due

345 *Prasanna Bai v. Collector of District*

342 Suit to set aside sale when made without arrears of revenue being due

346 *Prasanna Bai v. Collector of District*

343 Suit to set aside sale when made without arrears of revenue being due

347 *Prasanna Bai v. Collector of District*

344 Suit to set aside sale when made without arrears of revenue being due

348 *Prasanna Bai v. Collector of District*

345 Suit to set aside sale when made without arrears of revenue being due

349 *Prasanna Bai v. Collector of District*

346 Suit to set aside sale when made without arrears of revenue being due

350 *Prasanna Bai v. Collector of District*

347 Suit to set aside sale when made without arrears of revenue being due

351 *Prasanna Bai v. Collector of District*

348 Suit to set aside sale when made without arrears of revenue being due

352 *Prasanna Bai v. Collector of District*

349 Suit to set aside sale when made without arrears of revenue being due

353 *Prasanna Bai v. Collector of District*

350 Suit to set aside sale when made without arrears of revenue being due

354 *Prasanna Bai v. Collector of District*

351 Suit to set aside sale when made without arrears of revenue being due

355 *Prasanna Bai v. Collector of District*

352 Suit to set aside sale when made without arrears of revenue being due

356 *Prasanna Bai v. Collector of District*

353 Suit to set aside sale when made without arrears of revenue being due

357 *Prasanna Bai v. Collector of District*

354 Suit to set aside sale when made without arrears of revenue being due

358 *Prasanna Bai v. Collector of District*

355 Suit to set aside sale when made without arrears of revenue being due

359 *Prasanna Bai v. Collector of District*

356 Suit to set aside sale when made without arrears of revenue being due

360 *Prasanna Bai v. Collector of District*

357 Suit to set aside sale when made without arrears of revenue being due

361 *Prasanna Bai v. Collector of District*

358 Suit to set aside sale when made without arrears of revenue being due

362 *Prasanna Bai v. Collector of District*

359 Suit to set aside sale when made without arrears of revenue being due

363 *Prasanna Bai v. Collector of District*

360 Suit to set aside sale when made without arrears of revenue being due

364 *Prasanna Bai v. Collector of District*

361 Suit to set aside sale when made without arrears of revenue being due

365 *Prasanna Bai v. Collector of District*

362 Suit to set aside sale when made without arrears of revenue being due

366 *Prasanna Bai v. Collector of District*

363 Suit to set aside sale when made without arrears of revenue being due

367 *Prasanna Bai v. Collector of District*

364 Suit to set aside sale when made without arrears of revenue being due

368 *Prasanna Bai v. Collector of District*

365 Suit to set aside sale when made without arrears of revenue being due

369 *Prasanna Bai v. Collector of District*

366 Suit to set aside sale when made without arrears of revenue being due

370 *Prasanna Bai v. Collector of District*

367 Suit to set aside sale when made without arrears of revenue being due

371 *Prasanna Bai v. Collector of District*

368 Suit to set aside sale when made without arrears of revenue being due

372 *Prasanna Bai v. Collector of District*

369 Suit to set aside sale when made without arrears of revenue being due

373 *Prasanna Bai v. Collector of District*

370 Suit to set aside sale when made without arrears of revenue being due

374 *Prasanna Bai v. Collector of District*

371 Suit to set aside sale when made without arrears of revenue being due

375 *Prasanna Bai v. Collector of District*

372 Suit to set aside sale when made without arrears of revenue being due

376 *Prasanna Bai v. Collector of District*

373 Suit to set aside sale when made without arrears of revenue being due

377 *Prasanna Bai v. Collector of District*

JURISDICTION OF CRIMINAL COURT

—continued.

1. GENERAL JURISDICTION—continued.

5. - - - Special law, Jurisdiction under, Effect of Criminal Procedure Code on—
Criminal Procedure Code (Act X of 1892), s. 1.—
The jurisdiction conferred by the Code of Criminal Procedure (Act X of 1892) does not affect any special jurisdiction or power conferred by any law in force at the time when the Code came into force.
QUEEN-EMPRESS v. GUSTADJI BARBORJI

[I. L. R., 10 Bom., 181

6. ——— Order under Criminal Code by executive officer—*Power of Judicial Courts to question the legality of such order.*—Where an executive officer makes an order or issues a notification under the provisions of the Code of Criminal Procedure, it is not within the province of judicial authority to question the propriety or legality of such order or notification until an attempt is made to enforce the exaction of a penalty against a person committing a breach of such order or notification. It then becomes the duty of the judicial authority to consider whether the order is properly made or not.

IN THE MATTER OF THE PETITION OF SURJANARAIN DASS. EXPRESS v. SURJANARAIN DASS

[I. L. R., 6 Cal., 88

7. — Obstruction to right of way — *Erection of building on public way.* — Where a party residing on one side of a public lane encroaches on the lane by building, and narrows the passage at that particular spot, so far as to cause the traffic to pass over a portion of the land of the party residing on the opposite side of the lane, the remedy, the latter is, by recourse to the Criminal Court, to prevent the obstruction of the public thoroughfare. If he does not do so, he has no cause of action against the other. **ABDUL HYE v. RAM CHURN SINGH**

PI

8. ----- Suit for closing r
opening old one.—In a suit for
opened by the defendants thre
plaintiff, and for opening
been closed by the defend-
that the question of or
belongs to the Cr
Court. HIRA C
CHATTERJEE

European British subject is a matter of fact to be determined judicially by the Court of Session on the evidence, in the event of the prisoner raising the question. *Queen v. Pank*, 10 W. R. 67, 68.

not decide whether *B* was or was not a European British subject but proceeded with the case, dealing with him as if he were not a European British subject, and sentencing him to rigorous imprisonment for two years and a fine. On appeal by *B*, the High Court remanded the case to the Magistrate in order that he might decide, in the manner directed by s. 83 of the Criminal Procedure Code, whether *B* was or was not a European British subject. The Magistrate having decided that *B* was a European British subject, *H* said that *B* was so, and it appearing that the Magistrate had dealt with *B* as other than a European British subject, *H*'s trial was void for want of jurisdiction. *Ex parte C. Mearns*.

I. L. R., 4 A. M., 141

28. *British subject*—*Offence committed by British soldier*.—S. 101

13 B. L. R., 474; 23 W. R., 20

29. *Question of fact*—Whether or not an accused is a

I. L. R., 5 Cal., 124; 4 C. L. R., 432

35. *Recuse—Illegal connection*—Where a Magistrate being also a Justice of the Peace, convicted a British-born subject of mischief under s. 456 of the Penal Code, the High Court annulled the conviction and

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JURISDICTION OF CRIMINAL COURT

—continued.

2. EUROPEAN BRITISH SUBJECTS—continued.

British-born subjects, yet this power ceased in A.D. 1709, when its Charters were surrendered to Queen Anne. From that date down to the passing of the 3 & 4 Will. IV, c. 123 (with the exception of a limited power of legislating as regarded the local limits of the presidency town), no authority expressly granting power to the East India Company or the Indian Government to legislate for British-born subjects can be found. *Semble*—That neither the East India Company nor any Indian Government (with the like exception) possessed such power from the year 1709 till the passing of the 3 & 4 Will. IV, c. 122. With the exception of offences made punishable by the 53 Geo. III, c. 155, s. 105, by Justices of the Peace, the Recorder's Court had, by virtue of the 37 Geo. III, c. 142, s. 10, exclusive criminal jurisdiction over British-born subjects throughout the Bombay Presidency, and the same exclusive jurisdiction was continued to the late Supreme Court, and is now exercised by the High Court, with the like exception, and some further exceptions introduced by subsequent Acts of the Government of India. The Bombay District Police Act (VII of 1867), passed by the Governor of Bombay in Council for making laws and regulations, is *ultra vires* in so far as it confers criminal jurisdiction upon Magistrates in the mofussil, being also Justices of the Peace, over British-born subjects, as it thereby affects the Acts of Parliament under which the High Court is constituted, and interferes with the criminal jurisdiction which that Court possesses over British-born subjects in the mofussil, which jurisdiction is exclusive except in so far as it is limited by Stat. 53 Geo. III, c. 155, s. 105, and certain subsequent Acts of the Government of India. *REG. v. REAY* 7 Bom., Cr., 6

23. ——— Power to try European British subject—*Criminal Procedure Code (Act X of 1872), ss. 71-88—Power of Indian Legislature—24 & 25 Vict., c. 67 (Indian Councils Act), ss. 22 and 42.*—A European British subject in the mofussil was convicted by a Magistrate under the provisions of Ch. VII of Act X of 1872. He appealed to the High Court on the ground (*inter alia*) that the Magistrate had no jurisdiction to try the case, inasmuch as the Governor General in Council had not the power, under 24 & 25 Vict., c. 67, to subject a European British subject to any jurisdiction other than that of the High Court, and therefore the provisions of Act X of 1872, under which the prisoner had been tried, were *ultra vires* and illegal. *Held* that the jurisdiction of the High Court as given by the Letters Patent in subject to the legislative powers of the Governor General in Council, and therefore the Magistrate had jurisdiction to try the case. *THUN v. MEARES*

[14 B. L. R., 106; 22 W. R., Cr., 54]

24. ——— *Criminal Procedure Code, 1882, s. 4, cl. (i), and ss. 453 and 454—Privilege—Waiver—Jurisdiction of High Court over European British subjects in Sind—Bom. Act XII of 1866.*—Where a European British sub-

JURISDICTION OF CRIMINAL COURT

—continued.

2. EUROPEAN BRITISH SUBJECTS—continued.

ject waives his right to be dealt with as such by the Magistrate before whom he is tried, he thereby loses all the benefits of the special procedure provided for him under Ch. XXXIII of the Code of Criminal Procedure (Act X of 1882), including the right to have the proceedings in his case reviewed by a Presidency High Court, if another Court exercises the highest revisional jurisdiction under the Code in cases other than those against European British subjects in the place where he is tried. The definition of "High Court" in s. 4, cl. (i), of the Code of Criminal Procedure (Act X of 1882) must be read with reference to the "special proceedings" against European British subjects contemplated in Ch. XXXIII, and not with reference to proceedings generally against Europeans, including proceedings in which they waive their rights under that chapter. If therefore in any particular case the special rules contained in Ch. XXXIII of the Code cease to have any application, the definition of "High Court" in the former part of s. 4, cl. (i), ceases also to have any application to such a case. The definition in the latter part of the section then prevails, and the case falls within the category of "other cases" to which that part of the section applies. The accused, a European British subject, was tried before the City Magistrate of Karachi and convicted of criminal breach of trust under s. 409 of the Indian Penal Code, and sentenced to six months' simple imprisonment. At the trial, he waived his right to be tried as a European British subject. *Held* that the accused was not subject to the revisional jurisdiction of the High Court. The accused not having been tried under the special procedure laid down for the trial of European British subjects, the Sudder Court in Sind, which, under Bombay Act XII of 1866, was the highest Court of Appeal in all civil and criminal matters in Sind, had the revisional powers of a High Court in the present case by virtue of the latter part of s. 4, cl. (i), of the Code of Criminal Procedure. *QUEEN-EMPRESS v. GRANT*

[I. L. R., 12 Bom., 561]

25. ——— *Jurisdiction of High Court—Foreign Jurisdiction Act, 1879, Ch. II—European British subjects in Bangalore—Justices of the Peace for Mysore.*—The civil and military station of Bangalore is not British territory, but a part of the Mysore State, and the Code of Criminal Procedure is in force therein by reason of declarations made by the Governor General in Council in exercise of powers conferred by the Foreign Jurisdiction and Extradition Act, 1879. Justices of the Peace for the State of Mysore are also Justices of the Peace for Bangalore, and both the Civil and Sessions Judge and the District Magistrate of Bangalore, being such Justices of the Peace, are, by virtue of s. 6 of the said Act, subordinate to the High Court at Madras. The High Court has power, therefore, to transfer the trial of a European British subject from the Court of the District Magistrate of the civil and military stations of Bangalore to the Court of a Presidency Magistrate at Madras. *IN RE HAYES*

[I. L. R., 12 Mad., 39]

JURISDICTION OF CRIMINAL COURT

4. OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—continued.

(c) ALLEGEDLY OR WAITING WAR.

the original complaint, and the Court of Pains had jurisdiction common object. The Court of Pains had sent money from Calcutta to Pains by hand, and until that money reached its destination, the sending continued on the part of the prisoner. *QUEEN v. AMER KHAZ* [19 B. L. R., 38:17 W. R., Cr., 15]

(d) ABETTERMENT.

punishable with fine, and it is immaterial where the adulteration takes place. *KHARAK v. KHARAK* [1 L. R., 3 Bom., 384]

45. (c) CRIMINAL BREACH OF CONTRACT.
Contract made in foreign territory to be performed in foreign territory—*Act XIII of 1859*.—B, having contracted in foreign territory to labour for S in British territory, broke his

46. *Billigri* [1 L. R., 7 Mad., 364]

48. In force—*advance* him in to repay, and sentenced to imprisonment in default. *Alled* that the order was illegal as having been made without jurisdiction. *KHARAK v. KHARAK* [1 L. R., 10 Mad., 21]

47. (c) CRIMINAL BREACH OF TRUST.
Liability of native Indian subjects for offences committed out of British India—*Criminal Procedure Code, 1852*.

JURISDICTION OF CRIMINAL COURT

4. OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—continued.

District Magistrate to take the necessary action in the matter. The District Magistrate thereupon committed the accused to the Court of Session on a charge of abetment of murder or of robbing. *Held*, quashing the commitment, that the alleged abetment was not an offence punishable under the Indian Penal Code, and that therefore the Sessions Court had no jurisdiction to try the accused. *Held* also that s. 158 of the Code of Criminal Procedure had no application to the present case, the alleged offence of abetment not having been committed outside British India. *QUEEN v. KHARAK* [1 L. R., 19 Bom., 105]

49. Offence committed out of British India—*Penal Code (Act XLV of 1860)*, ss. 108A, 312—Disposing of a minor for immoral purposes—Offence not triable except with the sanction of Political Agent or sanction of Government—*Criminal Procedure Code (Act V of 1859)*.

not amount to an act which amounts to a continuance of the offence does not constitute either a principal offence or an attempt or abetment of the same. The intention of either of the accused while they were staying at Sholapur did not constitute any offence, and their removal with the girl to Talapur did not by itself constitute an abetment. *QUEEN v. KHARAK* [1 L. R., 19 Bom., 105]

DIGEST OF CASES.

JURISDICTION OF CRIMINAL COURT
—continued.

2. EUROPEAN BRITISH SUBJECTS—concluded.
sentence, and directed the accused to be committed to take his trial before the High Court, unless the complainant withdrew the charge under s. 271 of the Criminal Procedure Code. *REG. v. WELLS*
[7 Bom., Cr., 1

36. ———— *Officer invested with special powers*—Ss. 30, 31, and 209, Code of Criminal Procedure (Act X of 1882).—An officer invested with special powers under s. 35 of the Code of Criminal Procedure should rarely, if ever, try a case himself under s. 209 of the Code of Criminal Procedure, where it appears from some of the evidence that the accused might have been charged with an offence beyond the jurisdiction of the Magistrate to take cognizance of. *EMPRESS v. PARAMANANDA*
[I. L. R., 10 Calc., 85: 13 C. L. R., 375

3. NATIVE INDIAN SUBJECTS.

37. ———— *Native Indian subject of Her Majesty—Criminal Procedure Code (Act X of 1882), s. 188—Offence committed by an alien outside British India—Jurisdiction of Courts in British India to try such an offence.*—The accused was Talati of Kalol in British territory. His family belonged to the village of Bakrol in the Baroda State. His father entered the service of the British Government and lived almost entirely at Kalol, but he does not appear to have given up his intention of returning to his family residence at Bakrol. The accused was born at Dubhai in the Baroda territory. He was educated partly at Kalol and partly at Baroda. He entered the Revenue Survey Department in the British Government to the State were lent by the British Government to the State of Cambay. He was charged with taking bribes while serving at Cambay. He was tried and convicted by the first class Magistrate of Ahmedabad within whose jurisdiction he was found and bad within whose jurisdiction he was found and arrested. The Sessions Judge reversed the conviction on the ground that the Magistrate had no jurisdiction to try the accused. Held that the accused was not a "Native Indian subject of Her Majesty" within the meaning of s. 188 of the Code of Criminal Procedure; and though as a "servant of the Queen" he was subject to punishment under s. 4 of the Penal Code, the Magistrate of Ahmedabad, in whose jurisdiction he was found, had no jurisdiction under that section to try him for an offence committed in a Native Indian subject of Her Majesty in s. 188 of the Code of Criminal Procedure (Act X of 1882) must be construed strictly, and cannot be held to include "servants of Her Majesty." *QUEEN-EMPRESS v. NATWARAI*
I. L. R., 16 Bom., 178

4. OFFENCES COMMITTED ONLY PARTLY
IN ONE DISTRICT.

(a) GENERALLY.
38. ———— *Offence begun in one place and completed in another*—Stat. 9 Geo. IV,

JURISDICTION OF CRIMINAL COURT
—continued.4. OFFENCES COMMITTED ONLY PARTLY
IN ONE DISTRICT—continued.

c. 74, s. 56.—S. 56 of the Stat. 9 Geo. IV, c. 74 (applying and extending to the British territories in India the provisions then recently made for England with respect to offences committed in two different places or partially committed in one place and accomplished in another) applies only to the cases of persons amenable to the Supreme Court at Calcutta beginning to commit offences in one place which are afterwards completed in another, and not to a case where the persons committing the offence were not amenable to the said Court, and where the whole offence which has been committed was within one jurisdiction. The term "within the limits of the Charter of the said United Company," construed to mean within the limits of the Trading Charter of the East India Company. *NGA HOONG v. QUEEN*
[4 W. R., P. C., 109: 7 Moore's I. A., 72

39. ———— *Offence committed in British territory, instigated by foreign subject resident in foreign territory—Criminal Procedure Code, 1872, s. 66.*—Where a foreign subject, resident in foreign territory, instigated the commission of an offence which in consequence was committed in British territory, held that the instigation not having taken place in any district created by the Code of Criminal Procedure, the instigator was not amenable to the jurisdiction of a British Court established under that Code, s. 66. *REG. v. PIRTAI*
10 Bom., 356

40. ———— *Acts done partly within and partly without British territories—Offence under Penal Code.*—A person who is admittedly a subject of the British Government is liable to be tried by the Courts of this country for acts done by him, whether wholly within or wholly without, or partly within and partly without, the British territories in India, provided they amount to an offence under the Penal Code. *QUEEN v. ARMED-OOLEAH*
2 W. R., Cr., 60

(b) ABETMENT.

41. ———— *Abetment in British India of an offence committed in foreign territory not an offence under the Penal Code (Act XLV of 1860), ss. 109, 115, 147, and 302—Abetment of murder—Rioting—Penal Code (Act XLV of 1860), s. 188.*—An abetment in British India by a British subject of an offence committed in foreign territory is not an offence punishable under the Indian Penal Code (XLV of 1860), and cannot therefore be tried by a Court in British India. *Regina v. Elmstone, 7 Bom. H. C., Cr., 89, and Empress v. Moorga Chetty, I. L. R., 5 Mad., 338, followed.* The accused a Native Indian subject of Her Majesty, was committed to the Court of Session for abetting the commission of murder or of rioting under ss 302 and 147 of the Indian Penal Code. The alleged abetment consisted of words spoken in British territory by the accused inciting certain Portuguese subjects to kill one Bhana, if he attempted to remove the

JURISDICTION OF CRIMINAL COURT

4. OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—continued.

In Her Majesty along with the other Indian territories.

(1853), s. 158—Certificate of Political Agent—The absence of the Political Agent required by s. 158 of the Code of Criminal Procedure is an absolute bar to the trial of a case to which the provisions of that section apply. *QUEEN-KARNES v. HANDEVA*
[I. L. R., 19 ALL, 109]

(1) MURDER.

55. —Office committed in Cyprus—Foreign Jurisdiction and Extradition Act (XII of 1873), s. 3, 9—Liability of Native Indian British subject for offence committed in Cyprus—“Native State”—Legislative powers of Governor General in Council—Confirmation of sentence of death—Division Court Bill Court—Held inapplicable.

General of India in Council to make laws for the trial and punishment in British India of offences committed by British Indian subjects in British territories other than British India discussed. A Division Court of the High Court ordered the Magistrate who had refused to enquire into a charge of murder on the ground that he had no jurisdiction to enquire into such charges, considering that the Magistrate had jurisdiction to make such enquiry. The Magistrate enquired into the charge and committed the accused person for trial. The Court of Session convicted the accused person on the charge and sentenced him to death. The proceedings of the

1. I. R., 2 ALL, 218
56. —Murder committed in Island of Perim—Criminal Procedure Code, 1852, s. 7—Law in force at Perim—Aden, Jurisdiction of Court of Political Resident at—Act II of

Homby became a part of British India within the definition of Stat 21 & 22 Vict., c 106, and vested

In a subsequent state of the same case—*Mild, notwithstanding the notification of the Government including the Island of Perim within the session of Bombay (No 2336), dated the 6th May 1884, to commit persons for trial to the Court of Session at Aden, that the Court of the Political Resident at Aden had no jurisdiction over the Island of Perim, and that the Political Resident at Aden was not a Judge of a Court of Session for that island. Where, therefore, a person charged with having committed murder at Perim was committed by the Magistrate at Aden, where he was convicted and sentenced to death, the conviction was annulled, and the prisoner was ordered to be retried before a Court of competent jurisdiction. The Island of Perim, although under the control of the Political Resident at Aden, cannot be regarded as part of Aden, and the provisions of the Aden Act II of 1864 are not in force at Perim. Act II of 1864 did*

I. L. R., 10 BOM, 258
MAGISTRATE AT PERIM

JURISDICTION OF CRIMINAL COURT —continued.

4. OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—continued.

s. 188.—The accused were charged under s. 407 of the Indian Penal Code (Act XLV of 1860) with committing criminal breach of trust in respect of certain property entrusted to them as carriers. They were all native Indian subjects of Her Majesty. The offence was alleged to have been committed in Portuguese territory, and they were found in a place in British territory. *Held* that under s. 188 of the Criminal Procedure Code (Act X of 1882) the accused could be tried in the place where they were found. *QUEEN-EMPRESS v. DAYA BHIMA*. I. L. R., 13 Bom., 147

48. — Place where consequence of act ensued—*Criminal Procedure Code* (1882), ss. 179 and 185—*Penal Code* (Act XLV of 1860), s. 408.—B, an employé of a company the office of which was at Cawnpore, was charged with the offence punishable under s. 408 of the Penal Code. The complainant alleged that B, being in charge, on behalf of the company at a place in Bengal, of certain goods belonging to the company, and being ordered to return the said goods to Cawnpore, never did so, and failed to account for the goods, or their value, to the loss of the company. *Held* that, on the statement of the case by the complainant, the Courts at Cawnpore had jurisdiction to inquire into the charge, inasmuch as the consequence of B's acts, namely, loss to the company, occurred in Cawnpore. *QUEEN-EMPRESS v. O'BRIEN* [I. L. R., 19 All., 111]

(g) DACOITY.

49. — Dacoity committed out of British territory—*Concealment of property in British territory—Criminal Procedure Code*, 1872, s. 67.—Where dacoity was committed at Velanpor, a village in the territory of His Highness the Gayakwad, and a part of the stolen property found where it had been concealed by the accused in British territory, it was held that a conviction of dacoity could not be sustained, that being a substantive offence completed as soon as perpetrated at Velanpor; although, had Velanpor been in British territory, the subsequent acts in the process of taking away the property might, in the legal sense, have coalesced with the first and principal one so as to give jurisdiction under s. 67 of the Code of Criminal Procedure in each district into which the property was conveyed. But on a conviction of retaining stolen property, the sentences awarded could, it was held, be sustained, the retaining having taken place in British territory. *REG. v. LAKHYA GOVIND*. I. L. R., 1 Bom., 50

50. — Dacoity committed in British territory—*Criminal Procedure Code*, s. 180—*Dishonest receipt of stolen property in foreign territory*.—Certain persons, who were not proved to be British subjects, were found in possession, in a native State, of property the subject of a dacoity committed in British India. They were not proved to have taken part in the dacoity, and there was no evidence that they had received or retained any stolen property in British India. They were convicted

JURISDICTION OF CRIMINAL COURT —continued.

4. OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—continued.

of offences punishable under s. 412 of the Penal Code. *Held* that no offence was proved to have been committed within the jurisdiction of a British Court. *QUEEN-EMPRESS v. KIRPAL SINGH*

[I. L. R., 9 All., 523]

(h) EMIGRANTS, RECRUITING, UNDER FALSE PRE- TENCES.

51. — Place where false pretences were held out—*Jurisdiction to try recruiters of emigrants under s. 71, Act XIII of 1864*.—Recruiters of emigrants charged under s. 71, Act XIII of 1864, must be tried by the Magistrate within whose jurisdiction the holding out of false pretences to the labourers took place. ANONYMOUS

[4 Mad., Ap., 4]

(i) ESCAPE FROM CUSTODY.

52. — Place of trial—*District in which escape took place*.—A convict escaping from custody must be tried for that offence in the district within which he escaped: a Magistrate of another district has no jurisdiction to try him for the offence. *REG. v. DOSSA SERA*. 1 Bom., 139

(j) KIDNAPPING.

53. — Offences committed in different districts in the course of the same transaction—*Criminal Procedure Code* (1882), s. 180—*Penal Code* (Act XLV of 1860), ss. 366 and 368—*Kidnapping—Commitment where to be made*.—R, C, P, and K were committed by the Joint Magistrate of Muzaffarnagar to the Court of the Sessions Judge of Saharanpur. Upon the case which was before the Joint Magistrate, it appeared that R had committed the offence punishable under s. 366 of the Indian Penal Code in the district of Bijnor, and possibly the other three persons had committed the offence punishable under s. 368 of the Indian Penal Code in the district of Muzaffarnagar; C and P also possibly having committed the offence punishable under that section in Bijnor. Under the above circumstances, the High Court, maintaining the order of commitment made by the Joint Magistrate, directed the case to be transferred for trial to the Court for the trial of sessions cases arising in the Bijnor district, namely, that of the Sessions Judge of Moradabad. *REG. v. Samia Kaundan*, I. L. R., 1 Mad., 173, and *Queen-Emress v. Surja*, *Weekly Notes*, All. (1883), 164, not followed. *Queen-Emress v. Ingle*, I. L. R., 16 Bom., 200, and *Queen-Emress v. Abbi Reddi*, I. L. R., 17 Mad., 402, referred to. *Queen-Emress v. Thaku*, I. L. R., 8 Bom., 312, followed. *QUEEN-EMPRESS v. RAM DEH*

[I. L. R., 18 All., 350]

54. — Offence committed outside British territory—*Criminal Procedure Code*

JURISDICTION OF REVENUE COURT

—continued.

See Appeal—N. W. P. Acts

[L. T. R., 13 AN, 364

See Jurisdiction of Civil Court—

Officers, Right to

[L. T. R., 13 Mad., 41

See Cases under Jurisdiction of Civil

Court—HENT AND REVENUE STAFFS,

BOMBAY, MADRAS, AND N. W. PRO-

VIDENCE

See Possession, Order of Criminal

Court as to—ATTACHMENT OF

PROPERTY [L. T. R., 15, AN, 364

See Cases under High Jurisdiction—COM-

PEXENT COURT—REVENUE COURTS

1 BOMBAY REGULATIONS AND ACTS

1. Collector of Bombay—Bom-

Reg. XIX of 1827 § 2—The Revenue

under a 2 of Regulation XIX of 1827, had no

exclusive jurisdiction over the Collector of Bombay

for all acts done by him in his official capacity

RAYATIA KASHIWA LAD & NOKHAN

[15 Bom., O. C., 1

2. Suit for rent—Suit under Bom-

Reg. XVII of 1827 § 31, cl 3—Act XVI of

1838 § 1, cl 1—In a suit to recover rent in a Revenue

Court, under Regulation XVII of 1827, a 31,

cl 3,—Held that the proper questions to de-

termine were whether the defendant occupied the

land as tenant of the plaintiff during the period

alleged, and if so what rent was due, and that a

defendant so sued could not deprive the Court of

jurisdiction by setting up a title in himself, nor did

the suit by such defence become one "in which the

right to possession of land is claimed" within the

meaning of a 1, cl 1 of Act XVI of 1838. But

MANJESINGH & ANAND KASHANATH MANJES-

ING [2 Bom., 193, 2nd Ed., 186

3. Assignment

4. Mortgagee's right to redeem—Held that a

suit for rent could not be maintained in the Revenue

Court by the assignee against the mortgagee, as the

relation of landlord and tenant never existed between

them, nor against the representatives of the mort-

gagee, after they ceased to be in occupation of the

land, but the assignee should proceed under the

assignment in the Adawlat Courts. HINDU MARY

GHOSH & GHOSH

[2 Bom., 183

order

XVI

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a of

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judicial

months from the date of such disposition, and

JURISDICTION OF CRIMINAL COURT

—concluded.

4. OFFENCES COMMITTED ONLY PARTLY

IN ONE DISTRICT—concluded.

of stolen property under a 410 of the Penal Code

as amended by Act VIII of 1882 QUEEN—EXPENSES

& ABBOT LARIN VALAD ABBOT MANJAN

[L. T. R., 10 Bom., 186

5 OFFENCES COMMITTED DURING

TOURNEY.

64. Offence under Railway Act,

1863—Dismissal outside jurisdiction of—Guard

of train afterwards coming into jurisdiction.—The

High Court has no jurisdiction to try a prisoner

charged with drunkenness while as guard or under

guard in charge of a railway train where he was

removed from his post at a place outside the local

limits, although the train thereupon proceeded with

him to Madras QUEEN & MALORY QUEEN &

JOYNER

1 Mad., 103

65. Offence committed on in-

ter-

the complainant and the person by whom the offence

was allowed to take place in a public place

one term to the other without any interruption

by either party QUEEN & FRYAN

[13 B. L. R., Ap., 4

5. C. FRYAN & ANAND KASHANATH MANJES-

[31 W. R., Cr., 66

66. Theft of box during jour-

ney—Criminal Procedure Code, 1872, § 67—A box

containing money having been misused during a halt

at Subbarangunge, from a boat which was on the way

whether the charge of theft which was based on the

loss should be tried at Chittagong.—Held

that the journey was not broken by the halt, and

that, under a 67, Criminal Procedure Code, the

case could be tried at Chittagong QUEEN & ABBOT

ALL

25 W. R., Cr., 45

JURISDICTION OF REVENUE COURT.

Col.

1 BOMBAY REGULATIONS AND ACTS

4418

2. MADRAS REGULATIONS AND ACTS

4419

3. N. W. P. HENT AND REVENUE STAFFS

4420

4. ORDER HENT AND REVENUE STAFFS

4421

See Attachment of Rent

[L. T. R., A. C., 87

months from the date of such disposition, and

Court jurisdiction in case of disposition within six

months from the date of such disposition, and

months from the date of such disposition, and

months from the date of such disposition, and

JURISDICTION OF CRIMINAL COURT

—continued.

4. OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—continued.

not create a separate Court of Session at Aden. The Court created was the Court of the Resident, and the powers of that Court and of a Court of Session are not commensurate. *QUEEN-EMPRESS v. MANGAL TEKHAND* I. L. R., 10 Bom., 263

(l) RECEIVING STOLEN PROPERTY.

57. ———— **Receiving outside British territory—Criminal Procedure Code, 1861, s. 31**
—Subject of foreign State—Offence committed out of British territory.—S. 31 of the Criminal Procedure Code does not confer jurisdiction upon a Magistrate to try a subject of a foreign State for “receiving stolen property,” when the offence of receiving such property has been committed outside the British territories. *REG. v. BEOHAR MAYA* [4 Bom., Cr., 38

58. ———— **Property stolen in one place and received at another.—To make it legal to punish at Patna a prisoner committed in Calcutta on a charge of receiving stolen property, it must be shown that the property was stolen at Patna.** *QUEEN v. GHASOO KHAN* 5 W. R., Cr., 49

59. ———— **Receiving and retaining stolen goods within jurisdiction where the theft was committed out of jurisdiction—Penal Code, ss. 410 and 411—Commission to take evidence, Power of High Court to grant, on application of prisoner.—The prisoner was tried at Bombay, under s. 411 of the Penal Code, on a charge of having dishonestly received and retained stolen property, knowing or having reason to believe the same to be stolen property. He was also charged, under ss. 108 (explanation 3) and 109, with having committed that offence. It appeared at the trial that the prisoner was a clerk in the employment of a mercantile firm at Port Louis, in the Island of Mauritius. On the 29th October and the 1st November 1879, certain letters addressed by the firm to their commission agent at Bombay were abstracted and six bills of exchange belonging to the firm for an aggregate amount of Rs. 26,550. On the 1st November 1879, the prisoner sent all six bills of exchange in a letter to the manager of a Bank at Port Louis, requesting that the several amounts might be paid to him by bills on Mauritius. The sums were duly realized by the Bank, and duly remitted to the prisoner. It was not denied that the prisoner had possession of the money and used it as his own in payment of a debt. The prisoner was convicted on all the charges; but the jurisdiction of the Court was challenged on his behalf, that the offence was reserved. *Held per SARGENT and J.J. (WEST, J., dissentiente)*, that the offence was reserved, having been stolen at Mauritius, in which the Penal Code is not in force, could**

JURISDICTION OF CRIMINAL COURT

—continued.

4. OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—continued.

not be regarded as “stolen property” within the provisions of s. 410, so as to render the person receiving them at Bombay liable under s. 411; that the High Court of Bombay had therefore no jurisdiction, and that the conviction must be quashed. *EMPRESS v. MOORGA CHETTY* I. L. R., 5 Bom., 338

(m) THEFT.

60. ———— **Theft out of British territory—Criminal Procedure Code, 1872, s. 67.—The accused stole property in foreign territory and was apprehended with it in his possession in a district in British territory. Held that s. 67 of Act X of 1872 did not give the Courts of such district jurisdiction to try the prisoner for the theft.** *REG. v. ADIVIGADU* I. L. R., 1 Mad., 171

61. ———— **Dishonestly retaining in British territory property stolen beyond British territory—Criminal Procedure Code, 1872, s. 66.—A Nepalese subject, having stolen cattle in Nepal, brought them into British territory, where he was arrested and sentenced to one year's rigorous imprisonment. Held that he could not be tried for the theft itself, but that he might be convicted of dishonestly retaining the stolen property.** *EMPRESS v. SUNKER GOPE* [I. L. R., 6 Calc., 307; 7 C. L. R., 411

62. ———— **Theft in dwelling-house—Violation of conditions of remission of punishment—Penal Code, s. 227.—A person convicted by the Recorder's Court of Prince of Wales's Island, Singapore, and Malacca, of the crime of burglary and sentenced to transportation for ten years, at a place to be appointed by the Governor General of India in Council, was released from the Ratnagiri Jail on a ticket-of-leave after having been in confinement for more than eight years. At Karedar he committed theft in a dwelling-house before his sentence had expired. Held that the full power Magistrate at Karedar had jurisdiction to try the convict for the offence of violation of the condition of remission of punishment under s. 227, Penal Code.** *REG. v. AHOM* 9 Bom., 356

63. ———— **Theft where property is found out of jurisdiction—Jurisdiction of Courts in British India over offences committed out of British India—Rajkot, Civil Court at—Stat. 21 & 22 Vict., c. 106—Penal Code, ss. 381, 410, 411.—The civil station at Rajkot is not part of British India within the meaning of Stat. 21 & 22 Vict., c. 106. Where the accused, a subject of a Native State, committed theft at Rajkot Civil Station, and was found in possession of the stolen property at Thana,—Held that, as the offence was not committed in British India, and as the accused was not the subject of a Native State, the Sessions Court at Thana had no jurisdiction to try the accused for theft under s. 381 of the Penal Code. But it was competent to try him for dishonest retention**

JURISDICTION OF REVENUE COURT —continued.

1. BOMBAY REGULATIONS AND ACTS —concluded.

relates to immediate possession; and under s. 15, the party to whom such immediate possession is given by the Mamlatdar, or whose possession he shall maintain, shall continue in possession until ejected by a decree of a Civil Court. The power reserved to the Revenue Courts by s. 1, cl. 2, of Act XVI of 1838, to determine the facts of possession and dispossession, was so reserved merely for the temporary purpose of enabling those Courts to dispose of the immediate possession, which was to continue until the Civil Court ejected the party put into such immediate possession. The purpose of Act XVI of 1838, as that of Bombay Act V of 1864, was temporary only, and chiefly to provide for the cultivation of the land and to prevent breaches of the peace until the Civil Courts should determine the rights of disputants. The decisions of the Revenue and the Mamlatdars' Courts as to possession and dispossession do not bind the Civil Courts, the proceedings in the former Courts being of a summary character. The Civil Courts alone can entertain the question of title. *BASAPA BIN MURTIAPA v. LAKSHMAPA BIN MARITAMAPA*. I. L. R., 1 Bom., 642

2. MADRAS REGULATIONS AND ACTS.

5. ——— Suit for rent of land—*Mad. Act VIII of 1865—Power of Head Assistant Collector—Act XI of 1865.*—At the date of the enactment of Act XI of 1865, suits for rent of land could not be entertained by the Revenue officers of this presidency, so as to bar the cognizance of suits by the Small Cause Court. Madras Act VIII of 1865, equally with the prior enactments, abstains from authorizing the cognizance by the Revenue authorities of suits for arrears of rent. The cognizance of such a suit by a Head Assistant Collector is a proceeding *coram non judice*. *GAURI ANONTHA PARATHESE alias SATTHAPPAIYAN v. KALIAPPA SETTI* [3 Mad., 213

6. ——— Suit for possession of land after wrongful ejectment—*Mad. Act VIII of 1865, s. 12.*—Plaintiffs sued under s. 12 of Madras Act VIII of 1865, to be reinstated in the possession of certain lands from which they alleged they had been wrongfully ejected by the defendant, a zamindar. Defendant pleaded that the suit was not maintainable as the lands in question formed part of his "panai" lands and were not a part of his zamindari. Held that the suit was maintainable before the revenue authorities under s. 12, Madras Act VIII of 1865. *NAGAYASAMI KAMAYA NAIK v. PANDYA TEVAR*. 7 Mad., 53

7. ——— Suit for a pottah—*Madras Rent Recovery Act (Mad. Act VIII of 1865), ss. 8, 9, 10—Denial of tenancy by landlord—Question of title.*—In a summary suit brought under the Madras Rent Recovery Act to compel the defendant to give a pottah to the plaintiff for certain land which plaintiff claimed to hold from

JURISDICTION OF REVENUE COURT —continued.

2. MADRAS REGULATIONS AND ACTS —concluded.

him, the defendant denied that the plaintiff was his tenant. Held that the Collector was bound to try the question so raised, and not to refer the parties to a regular suit for its determination. *NABAYANA CHARARIAR v. RANGA AYYANGAR* [I. L. R., 15 Mad., 223

8. ——— Suit to enforce acceptance of pottah—*Madras Rent Recovery Act (Mad. Act VIII of 1865), ss. 9 and 10—Bonâ fide denial by defendant of plaintiff's title—Question of title.*—The plaintiff obtained a permanent lease of inam lands attached to a mosque from the four owners thereof. The defendant was a cultivating tenant on the lands, and the plaintiff duly offered the defendant a pottah. The defendant refused to execute a corresponding muchilika on the ground that the plaintiff was not his landlord, since the first of the aforesaid owners had granted a lease for 35 years to a person who had sublet the land to the defendant. The plaintiff thereupon brought a suit to enforce acceptance of a pottah under s. 9 of Madras Act VIII of 1865. The Deputy Collector having decided the case in the plaintiff's favour, the defendant appealed, and the District Judge dismissed the suit on the ground that the defendant's contention raised a *bonâ fide* question of title which ousted the jurisdiction of the Deputy Collector. Held that there is no provision in Madras Act VIII of 1865 that a *bonâ fide* denial of the relationship of landlord and tenant ousts the jurisdiction of the Revenue Courts; and, with regard to s. 10 of the Act, whenever a Court is invested with jurisdiction to determine the existence of a particular legal relation, the intention must be taken to be to authorize it to adjudicate on every matter of fact or of law incidental to such adjudication. *Narayana Charariar v. Ranga Ayyangar*, I. L. R., 15 Mad., 223, and *Ayappa v. Venkata Krishnamarazu*, I. L. R., 15 Mad., 485, cited and followed. *ABDUL RAHIMAN SAHIB v. ANNAPILLAI* [I. L. R., 17 Mad., 140

3. N.-W. P.-RENT AND REVENUE CASES.

9. ——— Nature of defence—*Effect of, on jurisdiction of Court.*—The jurisdiction of a Revenue Court under the Rent Act, 1859, was not affected by the nature of the defence set up. *DOXAL CHUNDER GHOSE v. DWARKANATH MITTER* [W. R., F. B., 47: Marsh., 148
1 Ind. Jur., O. S., 41: 1 Hay, 347

CHUNDER KOOMAR MUNDUL v. BAKER ALI KHAN [9 W. R., 598

10. ——— Denial of relation of landlord and tenant—*Issue as to relationship of landlord and tenant existing or not.*—If in a suit brought in the Revenue Court on an allegation of the existence of the relation of landlord and tenant that relation is denied by the defendant, the Court (instead of declining jurisdiction by reason of that denial)

JURY—continued.

3 JURY IN SESSIONS CASES—continued.

a confession that he had stricken the deceased with

12. — *Trial by jury.* *Queen v. Harwood*
10 W. R., Cr., 20

13. — *Irregularity in trial.* *Queen v. Harwood*
13 W. R., Cr., 58

14. — *Irregularity in trial.* *Queen v. Harwood*
13 W. R., Cr., 58

15. — *Irregularity in trial.* *Queen v. Harwood*
13 W. R., Cr., 58

16. — *Irregularity in trial.* *Queen v. Harwood*
13 W. R., Cr., 58

17. — *Irregularity in trial.* *Queen v. Harwood*
13 W. R., Cr., 58

18. — *Irregularity in trial.* *Queen v. Harwood*
13 W. R., Cr., 58

19. — *Irregularity in trial.* *Queen v. Harwood*
13 W. R., Cr., 58

JURY—continued.

2 JURY UNDER HIGH COURTS CRIMINAL

PROCEDURE—continued.

Counts Criminal Procedure Act to be tried by a jury

of which at least five persons shall not be Europeans

or Americans *Reo v. Laidlaw Gopaldas*

11 L. R., 1 Bom., 232

6. — *Separation of jury.* *Discretion*

the charge of officers of the Court; but on a trial for

whether they should be kept together or allowed

to return to their homes for the night, the latter

being generally done, and after the Code came into

operation the practice continued the same, as will in

the Supreme Court as subsequently in the High

Court, the judges applying the rule by determining

whether the offence under trial would by the old law

have been felony or a misdemeanour *Reo v. Dayal*

3 Bom., Cr., 20

7. — *Qualification of jury.* *Discretion*

11 L. R., 1 Bom., 232

8. — *Objection to juror.* *Criminal*

Procedure Code, 1861, s. 844, cl. (3). — The allowing

of an objection to a juror committed within the third

year the

yet the

16 W. R., Cr., 58

9. — *Breaching jury.* *Necessity to*

swear jurors. — Held that it was not necessary in a

trial by jury before a Court of Session under the pro-

visions of the Code of Criminal Procedure that the

jurors should be sworn *Reo v. Laidlaw Harwood*

3 Bom., Cr., 58

10. — *Omission to swear jury in*

sessions case. — *Queen.* — If the jury in a sessions

case are not sworn, is the omission one which would

be covered by s. 13 of the Oaths Act, 1837?

Queen v. Harwood Chunderkhantry

130 W. R., Cr., 10

11. — *Withdrawal of case from*

jury. — *Improper argument.* — In a case in which the

prisoner was charged with murder, and he made

12. — *Withdrawal of case from*

jury. — *Improper argument.* — In a case in which the

prisoner was charged with murder, and he made

13. — *Withdrawal of case from*

JURISDICTION OF REVENUE COURT

—continued.

3. N.-W. P. RENT AND REVENUE CASES

—continued.

but an application only. *PHULAHRA v. JEOLAL SINGH* . . . I. L. R., 6 All., 52

22. ——— Suit for arrears of rent for period prior to order—*Determination of rent by Settlement officer—Jurisdiction in such suit to determine rent for such period—N.-W. P. Land Revenue Act (XIX of 1873), ss. 72, 77—N.-W. P. Rent Act (XII of 1881), s. 95 (1).*—The jurisdiction to determine or fix rent payable by a tenant is given exclusively to the Revenue Court, either by order of the Settlement officer or by application under s. 95 (1) of the N.-W. P. Rent Act (XII of 1881); and such rent cannot be determined in a suit by a landholder for arrears of rent in the Revenue Court in which the appeal lies to the District Judge or High Court. In March 1884, the rent payable by an occupancy-tenant was fixed by the Settlement officer under s. 72 of Act XIX of 1873 (N.-W. P. Land Revenue Act). In 1885, the landholder brought a suit to recover from the tenant arrears of rent at the rate so fixed for a period antecedent to the Settlement officer's order, as well as for the period subsequent thereto. The lower Appellate Court dismissed the claim for rent, prior to the 1st July 1884, and decreed such as was due subsequently to that date, but without interest. *Held* that the rent could not be fixed in the present suit, neither the Court of first instance nor the High Court having jurisdiction to fix it, and that the claim for rent for the period in question must therefore be dismissed. *Ram Prasad v. Dina Kuar*, I. L. R., 4 All., 515; *Special Appeal No. 914 of 1879*; and *Phulahra v. Jeolal Singh*, I. L. R., 6 All., 52, referred to. *RADHA PRASAD SINGH v. JUGAL DAS* . . . I. L. R., 9 All., 185

23. ——— Suit for arrears of rent in kind—*N.-W. P. Rent Act (XVIII of 1873), s. 93—Bhoul.*—*Held* (PEARSON, J., dissenting) that a suit for the money equivalent of arrears of rent payable in kind is a suit for arrears of rent within the meaning of s. 93 of Act XVIII of 1873, and therefore cognizable by a Revenue Court. *Per* PEARSON, J.—Such a suit, being a suit for damages for breach of contract, is cognizable by a Civil Court. *TAJ-UD-DIN KHAN v. RAM PARSAD BHAGAT*

[I. L. R., 1 All., 217

24. ——— Suit partly cognizable in Revenue Court and partly in Civil Court—*N.-W. P. Rent Act (XII of 1881), ss. 206, 207.*—A co-sharer sued in a Court of Revenue (i) for his share of the profits of a mehal, and (ii) for money payable to him for money paid for the defendant on account of Government revenue. An objection was taken in the Court of first instance that the suit, as regards the second claim, was not cognizable in a Court of revenue. The lower Appellate Court allowed the objection, and dismissed the suit as regards such claim on the ground that the Court of first instance had no jurisdiction to try it. *Held* that the objection being in effect "an objection that the suit was instituted in the wrong Court," within the meaning of ss. 206 and 207 of Act XII of 1881, the defect

JURISDICTION OF REVENUE COURT

—continued.

3. N.-W. P. RENT AND REVENUE CASES

—continued.

of jurisdiction was cured by those sections, and the procedure prescribed in s. 207 should have been followed. *LACHMI NARAIN v. BHAWANI DIN*
[I. L. R., 4 All., 379

25. ——— *Act XII of 1881 (N.-W. P. Rent Act), ss. 206, 207.*—A suit was instituted in a Court of Revenue which was partly cognizable in the Civil Courts. *Held* on the question raised on appeal, whether the Revenue Court had jurisdiction to entertain the suit, that the provisions of ss. 206 and 207 of the Rent Act (N.-W. P.), 1881, rendered the plea in respect of jurisdiction ineffective. *BADRINATH v. BHAJAN LAL*

[I. L. R., 5 All., 191

26. ——— Suit for arrears of malikana—*Jurisdiction of Civil Court.*—Suits for arrears of malikana are cognizable by Revenue not by Civil Courts. *RAM CHURN v. GUNGA PERSHAD*
[2 N. W., 228

27. ——— Suit by mortgagor for profits—*Act XIV of 1863.*—Where a mortgagor obtaining possession of the mortgaged property by redemption sued the mortgagee for the profits of certain years as due to him by the latter,—*Held* that the question, being not between co-sharers, but between mortgagor and mortgagee, was not cognizable by the Revenue Court under Act XIV of 1863. *PRABHU SOOKH v. ABBAS ALY* . . . 2 *Agra, Rev.*, 4

28. ——— Suit by lambardar for share of profits—*Suit against lambardar.*—A suit by a lambardar for his share of the profits against another lambardar is cognizable by the Revenue Courts. *MOHAMED GHIOUS v. KURREEMOONISSA*

[1 *Agra, Rev.*, 52

29. ——— Suit for profits taken by lambardar as mortgagee—*Jurisdiction of Civil Court.*—Where profits received by a lambardar are not taken by him as lambardar, but in his individual character under a supposed mortgage title, such profits are not recoverable by a suit for profits in the Revenue Court. *KHOOR SINGH v. BULWANT SINGH*
[2 *Agra*, 302

30. ——— Suit against lambardar for profits—*Jurisdiction of Civil Court.*—A lambardar is not chargeable in the Revenue Court in respect of profits payable at a time prior to his appointment, although he succeeded his father in the office. His liability in such a case, if any exists, arises not by reason of his official character, but as one of his father's heirs and representing his estate, and the suit must be brought in the Civil and not in the Revenue Court. *MATA DEEN v. CHUNDEE DEEN* . . . 2 *N. W.*, 54

See *MATA DEEN DOOBAY v. CHUNDEE DEEN DOOBAY* 6 *N. W.*, 118

31. ——— *Act XIV of 1863, s. 1, cl. 2.*—A suit lies in the Revenue Court under cl. 2 of s. 1 of Act XIV of 1863 for a share of

JURY—continued

4 JURY UNDER NUISANCE SECTIONS OF CRIMINAL PROCEDURE CODE—continued

which had been given in before he made his final order in the matter. *NOZUKOVY & HASIM HAKY*

[21 W R., Cr., 54] Question for jury—Criminal

21 W R., Cr., 64

14 W R., Cr., 69

14 W R., Cr., 69

16 W R., Cr., 23

16 W R., Cr., 23

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16 W R., Cr., 23

16 W R., Cr., 23

16 W R., Cr., 23

JURY—continued

4 JURY UNDER NUISANCE SECTIONS OF CRIMINAL PROCEDURE CODE—continued

not in the order of the parties. *HAKIM CHANDRA SING & HASIM HAKY*

[21 W R., Cr., 54] Question for jury—Criminal

21 W R., Cr., 64

14 W R., Cr., 69

14 W R., Cr., 69

16 W R., Cr., 23

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16 W R., Cr., 23

16 W R., Cr., 23

16 W R., Cr., 23

JURY—continued.**1. JURY IN SESSIONS CASES—continued.**

In *the People v. ...* the court held that the jury was not bound to accept the evidence of the witnesses, and that the judge was not bound to direct the jury to accept the evidence of the witnesses. *4 C. L. R. 495*

17. *People v. ...* Trial by jury of an offence triable with assessor. *People v. ...* The court held that the jury was not bound to accept the evidence of the witnesses, and that the judge was not bound to direct the jury to accept the evidence of the witnesses. *4 C. L. R. 495*

People v. ... *4 C. L. R. 495*

18. *People v. ...* Order directing trial by jury. *People v. ...* The court held that the jury was not bound to accept the evidence of the witnesses, and that the judge was not bound to direct the jury to accept the evidence of the witnesses. *4 C. L. R. 495*

JURY—continued.**2. JURY IN SESSIONS CASES—continued.**

The court held that the jury was not bound to accept the evidence of the witnesses, and that the judge was not bound to direct the jury to accept the evidence of the witnesses. *4 C. L. R. 495*

4. JURY UNDER SUBSTANCE SECTIONS OF CRIMINAL PROCEDURE CODE.

19. *People v. ...* Appointment of jury. *Criminal Procedure Code, 1872, s. 341—Direction of Magistrate.* *People v. ...* The court held that the jury was not bound to accept the evidence of the witnesses, and that the judge was not bound to direct the jury to accept the evidence of the witnesses. *4 C. L. R. 495*

20. *People v. ...* Jury in, especially in, *People v. ...* *People v. ...* The court held that the jury was not bound to accept the evidence of the witnesses, and that the judge was not bound to direct the jury to accept the evidence of the witnesses. *4 C. L. R. 495*

People v. ... *4 C. L. R. 495*

21. *People v. ...* Order for removal of objection in public way. *Jury in, especially in, People v. ...* *People v. ...* The court held that the jury was not bound to accept the evidence of the witnesses, and that the judge was not bound to direct the jury to accept the evidence of the witnesses. *4 C. L. R. 495*

22. *People v. ...* Criminal Procedure Code (Act I of 1893), s. 138—Use of discretion in nomination of jurors by Magistrate. *People v. ...* The court held that the jury was not bound to accept the evidence of the witnesses, and that the judge was not bound to direct the jury to accept the evidence of the witnesses. *4 C. L. R. 495*

KABULIAT—continued.

2. IN RESPECT OF WHAT SUIT LIES

—concluded.

will lie." NOMAN, J., was of opinion that, as a general rule, the holder of a tenure cannot be sued by

it did not answer the question on the ground that he did not arise in the suit. JUDAN CHANDRA DEBAN e. DEBIDABAYE BHANA

[S. H. L. R., 251; 16 W. R., 1, H. 21]

6. —Disputed land.

can-
com-
cul-
tion.

[S. W. R., 219]

7. —Right of habery.—A suit for a kabulat will not lie for a right to fish in certain waters. MONIR GOSWAMI e. NITTAKE HIRAB

[S. W. R., Act X, 101]

8. —Suit for etman kabulat.—

etman kabulat from his tenants at the prevailing rate is cognizable only under the Rent Act 2889. A suit for etman kabulat—A suit by a proprietor of land for an

[11 W. R., 641]

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KABULIAT—continued.

3. RIGHT TO SUE.

—concluded.

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RY—concluded.

JURY UNDER NUISANCE SECTIONS OF CRIMINAL PROCEDURE CODE—concluded.

4. 32. ——— Report of majority of jury—*Criminal Procedure Code, 1872, s. 523—Duty of Magistrate.*—Where, under s. 523 of the Criminal Procedure Code, a Magistrate receives the report of a jury, he is bound to act according to the recommendation of the majority. When a number of jurors do not agree with one another in every respect, but agree that a certain order passed by a Magistrate, taken as a whole, is not necessary, such jurors should be counted together as objecting to the order. *SEN v. NAKORI PAROEE* . 25 W. R., Cr., 31

33. ——— *Criminal Procedure Code, s. 133—Public way—Nuisance—Refusal of obstruction—Refusal of minority of jury to act.*—When a minority of a jury appointed under the provisions of s. 133 of the Criminal Procedure Code do not act, the Magistrate cannot proceed under that section upon a report submitted by the majority. *IN THE MATTER OF DURGA CHARAN DAS SASHI BHUSAN GUHO* . I. L. R., 13 Calc., 275

34. ——— *Verdict on inspection of locality without taking evidence.*—A jury must decide a matter referred to them merely on inspection of the locality without taking any evidence. *ALLASH CHUNDER SEN v. RAM LALL MITTRA* [I. L. R., 26 Calc., 889

JUSTICES TERTIL,

See CONTRACT—BREACH OF CONTRACT, [8 B. L. R., 581

See ESCHEAT . 1 B. L. R., P. C., 44

JUSTICE, EQUITY, AND GOOD CONSCIENCE, DOCTRINE OF—

See BURMA COURTS ACT, 1889, s. 4. [I. L. R., 26 Calc., 1

See CIVIL PROCEDURE CODE, s. 102. [I. L. R., 22 Calc., 8

See COMPANY—WINDING UP—COSTS AND CLAIMS ON ASSETS I. L. R., 16 All., 53

See HINDU LAW—INHERITANCE—ILLEGITIMATE CHILDREN. [I. L. R., 13 All., 573

JUSTICE OF THE PEACE.

See HIGH COURT, JURISDICTION OF—MADRAS—CRIMINAL. [I. L. R., 12 Mad., 39

See JUDICIAL NOTICE. [I. B. L. R., O. Cr., 15

See JURISDICTION OF CRIMINAL COURT—EUROPEAN BRITISH SUBJECTS. [7 Bom., Cr., 1 I. L. R., 5 Mad., 33

JUSTICES, SUIT AGAINST—

See CALCUTTA MUNICIPAL ACT, 1863, s. 226. [8 B. L. R., 265

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KABULIAT.

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| 1. FORM OF KABULIAT | 4436 |
| 2. IN RESPECT OF WHAT SUIT LIES | 4436 |
| 3. RIGHT TO SUE | 4438 |
| 4. REQUISITE PRELIMINARIES TO SUIT | 4439 |
| 5. PROOF NECESSARY IN SUIT | 4440 |
| 6. DECREE FOR KABULIAT | 4443 |

See CASES UNDER LEASE.

See SPECIFIC PERFORMANCE—SPECIAL CASES . I. L. R., 3 Calc., 464

Suit for—

See CASES UNDER CO-SHARERS—SUITS BY CO-SHARERS WITH RESPECT TO JOINT PROPERTY—KABULIATS.

1. FORM OF KABULIAT.

1. ——— Date for commencement of kabuliats—*Discretion of Court—Suit for kabuliats without specifying date.*—Where a plaintiff asks for a kabuliats for a given term, without specifying the date from which the term is to commence, it is in the discretion of the Court to fix the proper term. *POOBNO CHUNDER ROY v. STALKART* [10 W. R., 362

See GHOLAM MAHOMED v. ASMUT ALI KHAN CHOWDHRY . B. L. R., Sup. Vol., 974

2. ——— Omission of specification of boundaries in kabuliats—*Act X of 1859, s. 2.*—The want of specification of boundaries in a kabuliats is no ground for dismissing a suit for a kabuliats, when all the particulars of area are given as required by s. 2 of Act X of 1859. *RAMNATH RAKHIT v. CHAND HARI BHUYA* [6 B. L. R., 356; 14 W. R., 432

2. IN RESPECT OF WHAT SUIT LIES,

3. ——— Suit for kabuliats for portion of land—*Land included in an entire holding.*—A suit for a kabuliats will not lie for a portion only of the land included in an entire holding. *RAM DOSS BRUTTACHARJEE v. RAMJERBUN PODDAR* [6 W. R., Act X, 103

ABDUL ALI v. YAR ALI KHAN CHOWDHRY [8 W. R., 467

4. ——— *Land held under istemrari tenures.*—A landlord cannot sue for a kabuliats in respect of a portion of the land held under an istemrari pottah. *DOORGAKANT MOZOOMDAR v. BISHESHUR DUTT CHOWDHRY* [W. R., 1864, Act X, 44

5. ——— *Proprietor of fractional share in estate.*—The question was referred to a Full Bench "whether a suit by the owner of a fractional share of an undivided estate for a kabuliats

KABULIAT—continued

2. PROOF NECESSARY IN SUIT—continued

33. Suit for Kabuli-
at rate other than 1/2 and 1/4 for a

34. Rate of rent, Evidence of—
17 W. R., 389

35. Rate of rent—Probable rent—In a suit for a
16 W. R., 290

36. Rate of rent—Suit for Kabuli and amount
13 W. R., 272

37. Rate of rent—Suit for Kabuli and amount
13 W. R., 272

38. Rate of rent—Suit for Kabuli and amount
13 W. R., 272

39. Rate of rent—Suit for Kabuli and amount
13 W. R., 272

40. Rate of rent—Suit for Kabuli and amount
13 W. R., 272

41. Rate of rent—Suit for Kabuli and amount
13 W. R., 272

42. Rate of rent—Suit for Kabuli and amount
13 W. R., 272

43. Rate of rent—Suit for Kabuli and amount
13 W. R., 272

44. Rate of rent—Suit for Kabuli and amount
13 W. R., 272

KABULIAT—continued

6 PROOF NECESSARY IN SUIT—continued

Particular land specified in a suit. Suit Chandra
Bose v. Hani Chandra Chandra 9 W. R., 631

29. Rate of rent, Evidence of—
17 W. R., 389

30. Rate of rent—Probable rent—In a suit for a
17 W. R., 389

31. Rate of rent—Suit for Kabuli and amount
13 W. R., 272

32. Rate of rent—Suit for Kabuli and amount
13 W. R., 272

33. Rate of rent—Suit for Kabuli and amount
13 W. R., 272

34. Rate of rent—Suit for Kabuli and amount
13 W. R., 272

35. Rate of rent—Suit for Kabuli and amount
13 W. R., 272

36. Rate of rent—Suit for Kabuli and amount
13 W. R., 272

37. Rate of rent—Suit for Kabuli and amount
13 W. R., 272

38. Rate of rent—Suit for Kabuli and amount
13 W. R., 272

39. Rate of rent—Suit for Kabuli and amount
13 W. R., 272

KABULIAT—continued.

3. RIGHT TO SUE—concluded.

10.

Proof of right to

rent—Trespasser—Decree in summary suit for possession.—A zamindar cannot compel a trespasser on his land to become his raiyat and execute a kabuliati in his favour, and the fact that the zamindar has obtained a summary decree under s. 15, Act XIV of 1859, against a person, does not entitle him to treat such person either as a trespasser or a raiyat on his land. *HEMALAH v. KUMLA KANT BANERJEE*

[16 W. R., 133]

4. REQUISITE PRELIMINARIES TO SUIT.

20.

Notice of enhancement.—

A suit for a kabuliati at an enhanced rate, to take effect prospectively from the date of suit, may be instituted without any preliminary notice of enhancement, and at any time during the tenancy. *BRAB v. KUMUL SHARA*

4 W. R., Act X, 5

21.

Landlord and

tenant.—*Held per STEEN, KEMP, and SETON-KARR, JJ.*, that, under Act X of 1859, a landlord can sue his tenant for a kabuliati fixing the amount of rent, without having served upon him notice of enhancement. *Per NORMAN, J.*—Such notice was necessary, and by s. 9 of Act X of 1859 the landlord must, before suing for a kabuliati, tender a pottah to the tenant. *Per PEACOCK, C.J.*—The question did not arise in the case. The relationship of landlord and tenant did not exist between the parties. *RAM KANTH CHOWDHRY v. BHUBEN MOHUN BISWAS*

[B. L. R., Sup. Vol., 25: 5 W. R., F. B., 183]

WOOLFUT HOSSEIN v. JUMOONA DASS

[W. R., 1864, Act X, 60]

DOORGA PERSHAD DOSS v. KALEE KINKUR ROY

[5 W. R., Act X, 88]

22.

Act X of 1859,

ss. 9 and 13.—*Held, by the majority of a Full Bench,* a landlord can sue for a kabuliati at an enhanced rate without first having given notice of enhancement under s. 13, Act X of 1859. He can also sue without having first tendered a pottah. *Per PEACOCK, C.J.*—He can sue if he has given notice of enhancement. *Per NORMAN, J.*—A suit for a kabuliati is not maintainable except in cases provided for by s. 9, Act X of 1859. *THAKOORANEE DASSEE v. BISHESHUR MOOKERJEE*

[B. L. R., Sup. Vol., 202: 3 W. R., Act X, 29]

SUFFER ALI v. FUTTEH ALI

[W. R., 1864, Act X, 2]

TARINER CHURN BOSE v. KASHINATH SINGH

[W. R., 1864, Act X, 37]

23.

Tender of pottah—Decree

contingent on offer of pottah.—The previous tender of a pottah is not absolutely necessary to entitle a landlord to a decree for a kabuliati. The decree may make the obtaining of the kabuliati contingent on the offering of a corresponding pottah. *MUNSOOR ALI v. BUNOO SINGH*

7 W. R., 282

NITYANUND GHOSE v. KISSEN KISHORE

[W. R., 1864, Act X, 82]

KABULIAT—continued.

4. REQUISITE PRELIMINARIES TO SUIT—concluded.

MAHOMED YACCOB HOSSEIN v. CHOWDHRY WAHED ALI

[4 W. R., Act X, 23: 1 Ind. Jur., N. S., 29]

GOVIND CHUNDER ADDY v. AULOO BEEBEE

[1 W. R., 49]

MODHOODOODUN CHOWDHRY v. RAM MOHUN GUPTA

8 W. R., 473

24.

Landlord and tenant.—In order to entitle a landlord to sue for a kabuliati, he must tender a pottah. *AKHOY SUNKUR CHUCKERDUTTY v. INDRO BHESAN DEB ROY*

[4 B. L. R., F. B., 58]

12 W. R., F. B., 27]

PERTAB CHUNDER BANERJEE v. PHILIPPE

[2 W. R., Act X, 58]

TROTUCKHONATH CHOWDHRY v. KALEEMA BIKER

2 W. R., Act X, 96]

UMDICA CHURN POTTERO v. BOLDANATH POTTERO

[1 W. R., 82]

25.

Act X of 1859, s. 9.—A landlord is not entitled, under Act X of 1859, s. 9, to require his tenant to give him a kabuliati unless the tenant holds under a pottah, or the landlord has tendered a pottah. *GOBINLALL SEAL v. KINOO KOYAL*

Marsh., 400]

DOORGA KANT MOZOOMDAR v. BISHESHUR DUTT CHOWDHRY

W. R., 1864, Act X, 44]

26.

Issues—Intervenors.—

Where a suit is brought for a kabuliati after service of the proper notice, the first and main question is whether, as a matter of fact, the plaintiff can establish that he or some person from whom he derives title, put the defendant into possession of all the lands in respect of which the kabuliati is demanded; and the second question is whether he has tendered a proper pottah, and is therefore entitled to the corresponding kabuliati. For the decision of such a suit it is immaterial whether the land for which the kabuliati is demanded belongs in reality to the plaintiff or to third parties, and the Court should not allow the latter to come in as intervenors against the will of the plaintiff. *RADHA NATH CHOWDHRY v. JOY SOONDER MOITTA*

2 C. L. R., 302]

5. PROOF NECESSARY IN SUIT.

27.

Evidence of quantity of

land.—Failure to prove quantity.—In a suit for obtaining a kabuliati, failure to prove the exact quantity of land for which the kabuliati is sought to be obtained renders the suit liable to dismissal. *SHIB RAM GHOSE v. PRAN PIRIA*

[4 B. L. R., Ap., 89: 13 W. R., 280]

28.

Proof of reasonable rent—

Proof of holding land in suit—Onus of proof.—A landlord suing a raiyat for a kabuliati is bound to make out the reasonableness of the rent which he demands, and *a fortiori* that the defendant is holding the

KHOJA MAHOMEDANS—concluded.

law as
in the
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simple

the Hindu law, which, in the absence of proof of custom to the contrary, is applicable to Khoja Mahomedans. The onus is on the party alleging such a right in the case of Khoja Mahomedans to prove it. Held on the evidence that it was not established that amongst Khojas in Bombay there was any recognized right of a son to demand partition in the

trade is said to be ancestral in the hands of that individual, it is not enough to show that the property some property, it must be shown that the property inherited contributed in a maternal degree to the wealth of an unmaried *AMRUDHOT HIRABHOY* & *CASABHOY AMRUDHOT*

KHOJI ACT (BOMBAY ACT I OF 1865)
See BOMBAY SURVEY AND SETTLEMENT ACT
KHOJI SETTLEMENT ACT (BOMBAY ACT I OF 1880)
See KHOTI TENURE.
[I. L. R., 8 Bom., 625
I. L. R., 13 Bom., 373
I. L. R., 13 Bom., 373
See LASH—CONSTRUCTION
[I. L. R., 13 Bom., 373
I. L. R., 13 Bom., 133
See STATUTES, CONSTRUCTION OF

KAZI—concluded.

See MAHOMEDAW LAW—CUSTOM
[I. L. R., 1 Bom., 603
See MAHOMEDAW LAW—KAZI.
See MAHOMEDAW LAW—KAZI.
[I. L. R., 18 Bom., 401
See MAHOMEDAW LAW—KAZI—BOMBAY.

KHAZANCHI.
See CRIMINAL PROCEEDINGS (CODE), s. 43
(1872, s. 90)
[I. L. R., 4 Cal., 803

KHOJA MAHOMEDANS.
See HINDU LAW—CUSTOM—JUNKITACH
AND SUCCESSORS
[I. L. R., 3 Bom., 34
13 Bom., 323
See RELIGIOUS COMMUNITIES

[Distinction between ancestral and self-acquired property among Khoja Mahomedans—Right of a son to obtain partition of ancestral property in his father's lifetime without his father's consent—Burden of proving property to be self-acquired—Amongst Khoja Mahomedans a son is entitled to obtain partition of ancestral estate in his father's lifetime without his father's consent. By the law and customs of Khoja Mahomedans there is a distinction between ancestral and self-acquired property in reference to the power of the owner to

on the plaintiff in the first instance to give evidence that the property was ancestral. In such cases the amount of the evidence required to shift upon the defendant the burden of disproving it depends on the circumstances of each case
CASABHOY AMRUDHOT & AMRUDHOT HIRABHOY
[I. L. R., 13 Bom., 280

rent to the whole
mortgages) sued to enforce his mortgage, and made
the plaintiff A and his two sisters parties. He
obtained a decree and sold the mortgaged land in ex-
ception bought it and now claimed possession. I

KABULIAT—concluded.**5. PROOF NECESSARY IN SUIT—concluded.**

disseented from. *GOGON MANJI v. KASHISHWARY DEBI* I. L. R., 3 Calc., 498

S. C. GOGON MANJI v. GOBIND CHUNDER KHAN
[I. C. L. R., 241]

37. ————— *Enhancement of rent—Pottah, Tender of—Form of decree.*—If a plaintiff brings a suit for a kabuliata at an enhanced rate against a tenant holding a mouzah under him at a wholly insufficient rent, and the tenant sets up a wholly false and fraudulent defence, *e.g.*, that the rent he pays is not liable to enhancement, as he holds under a pottah which entitles him to hold so long as he pays a certain fixed rent quite irrespective of the value of his holding; and if on enquiry it is found that the defendant's plea is entirely false, and that he is not entitled to hold at any fixed rent, but only on payment of a fair rent with reference to the value of his holding, still if it be found that the plaintiff has at all overestimated the amount of rent to which he is entitled, his suit must be dismissed with costs. *BRUJO KISHORE SINGH v. BHARRUT SINGH MOHAPUTTUR* I. L. R., 4 Calc., 963

MAHOMED ASSUR v. POGOSE 2 C. L. R., 8

6. DECREE FOR KABULIAT.

38. ————— *Form of decree—Specification of duration of kabuliata—Decree in suit for kabuliata.*—In a decree for a kabuliata the term for which it is to remain in force should not be fixed. *SWARNAMAYI v. GAURI PRASAD DAS*
[3 B. L. R., A. C., 270]

39. ————— *Kabuliata, Decree for, without fixing term, Effect of.*—Where a suit for a kabuliata at an enhanced rent is decreed without any term being fixed by the Court, the kabuliata executed is inoperative beyond the year of demand. *KRISTO CHUNDER MURDRAJ v. POOROSUTTUM DASS*
[15 W. R., 424]

MODHOO RAM DEY v. BOYDONATH DASS
[9 W. R., 592]

KARNAM.

See HEREDITARY OFFICES REGULATIONS.
[5 Mad., 360]

See HINDU LAW—INHERITANCE—SPECIAL HEIRS—MALES—DAUGHTER'S SON.
[I. L. R., 18 Mad., 420]

See MADRAS REGULATION XXIX OF 1802.
[4 Mad., 234
I. L. R., 9 Mad., 214, 283
I. L. R., 10 Mad., 226
I. L. R., 11 Mad., 196
I. L. R., 18 Mad., 420]

See MADRAS REVENUE RECOVERY ACT,
s. 52 I. L. R., 15 Mad., 35

See PUBLIC SERVANT.
[I. L. R., 15 Mad., 127]

KARNAM—concluded.

See RIGHT OF SUIT—OFFICE OR EMOLUMENT I. L. R., 10 Mad., 226

[I. L. R., 15 Mad., 284
I. L. R., 21 Mad., 47
I. L. R., 23 Mad., 47]

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—GOVERNMENT, SUITS AGAINST I. L. R., 18 Mad., 395

1. ————— *Right of women to hold office of karnam.*—Women are incapacitated from holding the office of karnam. *Alymalammal v. Venkataramayyan, S. D. A., Mad., 1844, p. 85,* followed. *VENKATARATNAMMA v. RAMANUJASAMI*
[I. L. R., 2 Mad., 312]

2. ————— *Office of karnam in zamindari village—Right of woman to succeed—Mad. Reg. XXIX of 1802, s. 7.*—A woman cannot hold the office of karnam. *CHANDRAMMA v. VENKATARAJU* I. L. R., 10 Mad., 226

3. ————— *Rights of de facto karnam—Presumption of appointment from long tenure—Limitation.*—A filed a plaint on 28th June 1882 for a declaration of his title as karnam of a village and for arrears of dues payable to him as such, including those for Fasli 1288, which accrued due on 1st July 1879. His family had held the office and discharged its duties for three generations, but there was no evidence of any formal appointment of A or his ancestors. Held that the plaintiff was entitled to the dues as de facto karnam, and his claim was not barred in respect of any of the arrears claimed. *GANAPATHI v. SITHABAMA*
[I. L. R., 10 Mad., 292]

4. ————— *Karnam in permanently-settled estate—Mad. Reg. XXXV of 1802, ss. 8 and 11—Mad. Reg. XXIX of 1802, s. 5—Right to sue for removal of karnam—Delegation of such right to lessees of zamindari—Damages accrued by a karnam's neglect of a statutory duty.*—The lessees of a zamindari are not entitled to sue for the removal of a karnam from office, though their lease contains a provision purporting to authorize them to appoint and remove karnams, but if they suffer any loss from the karnam's neglect of his statutory duty, they are entitled to bring an action for damages against him. *KUMARASAMI PILLAI v. ORR* I. L. R., 20 Mad., 145

KARNAVAN.

See CASES UNDER MALABAR LAW—JOINT FAMILY.

See CASES UNDER MALABAR LAW—MAIN-TENANCE.

KATTUBADI.

See RENT I. L. R., 22 Mad., 12

KAZI.

See COLLECTOR I. L. R., 18 Bom., 103

See HEREDITARY OFFICES ACT, s. 13.
[I. L. R., 18 Bom., 103
I. L. R., 19 Bom., 250]

ACT I OF 1880)—continued.

NARAYANA & KRISHNAJI NARAYAN JOSHI
 [T. L. R., 21 Bom., 407
 and s. 33-Bombay Land

THEY ARE NOT THE ONLY ONES WHO ARE BEING
KILLED AND MURDERED IN THE SOUTH.

the retained entry by the Collector, — *Meis* that the

REPORT OF THE

[T. L. R., 21 BOM, 480

ANTICIPATING A HIGHLY INTERESTING
[I. L. R., 21 Nov., 480]

under the Khoti Settlement Act (Bombay Act I

KHOTI SETTLEMENT ACT (BOMBAY ACT I OF 1880)—continued

contended that A's interest terminated at his death, and that S was therefore not entitled to possession. *Held* that S was entitled to possession. The fact that A had paid rent to the khots showed that he was their tenant. In the absence of all evidence on the subject, the presumption was that tenancy was an ordinary tenancy from year to year continuable until legally terminated. There was nothing to show that the khots had ever terminated it. A's heir could not surrender it to the prejudice of the mortgagee. S therefore had purchased a tenancy which had never been legally put an end to, and was entitled to possession. Under the Khoti Settlement Act (Bombay Act I of 1880), occupancy tenancies are not transferable except under certain circumstances, but there is no prohibition to the transfer of an ordinary tenancy. **SONSHET ANTUSHET TELI v. VISHNU BABAJI JOHARI** . . . I. L. R., 20 Bom., 78

s. 18—*Mortgagee of a co-sharer in the khotki settlement register, Preparation of—Survey officer's authority to determine the title of persons claiming as mortgagees only from a co-sharer.*—The word "khot" as used in the Bombay Khoti Act (Bombay Act I of 1880) does not include a mortgagee of a co-sharer in the khotki. The Act does not give the Survey officer, when preparing the settlement register, any authority to investigate and determine the title of persons who claim as mortgagees only of a share in the khotki, still less to determine whether an alleged mortgage of a share has been redeemed or is still subsisting. **DATTATRAYA GOPAL v. RAMCHANDRA VISHNU** I. L. R., 24 Bom., 533

ss. 18 and 17—*Entry in the Survey Settlement officer's record, Finality of—Land Revenue Code (Bom. Act V of 1879), s. 108.*—The Settlement officer's record fixing the amount of rent payable to a khot in respect of lands in the khoti village, though prepared in the form of the statement published at p. 584 of the "General Rules of the Revenue Department," edition of 1893, and labelled "hot-khat," cannot be treated either as a survey register under s. 108 of the Land Revenue Code (Bombay Act V of 1879) or a settlement register as it is called in s. 16 of Bombay Act I of 1880; it is one of the "other records" prepared under s. 17 of the latter Act. **VAIDKHAJ ROSHANKHAN SARGURO v. SAKHYA** . . . I. L. R., 20 Bom., 729

1. — s. 17—*Entry in Survey officer's record—Land Revenue Code (Bom. Act V of 1879), s. 108—Evidence Act (I of 1872), s. 40—Res judicata.*—An entry of a record prepared under s. 108 of the Land Revenue Code (Bombay Act V of 1879), by the Survey officer, describing certain lands as khoti, is by force of s. 17 of the Khoti Act (Bombay Act I of 1880) conclusive and final evidence of the liability thereby established, and shuts out the evidence of a prior decision otherwise relevant under s. 40 of the Evidence Act as proof of *res judicata* whereby a Civil Court adjudged the land to be dhara. **Gopal Krishna Parachure v. Sakhojirav**, I. L. R., 18 Bom., 133, referred to and followed. **RAMCHANDRA BHASKAR NANAL v. RAGHUNATH BACHASSET SONAR** . . . I. L. R., 20 Bom., 475

KHOTI SETTLEMENT ACT (BOMBAY ACT I OF 1880)—continued.

2. — and ss. 20 and 21—*Entry in the Settlement officer's record—Evidence as to amount of rent due.*—An entry in the Settlement officer's record referred to in s. 17 of the Khoti Act (Bombay Act I of 1880) is conclusive as to the nature and amount of rent. The words "conclusive and final evidence of the liability" in s. 17 have the effect of shutting out any other evidence on the subject which might be adduced before the Civil Court. The words "when not final" in s. 21 of the Act refer to the finality ascribed in s. 17 to the entries of the nature therein mentioned, and which follow as contemplated in s. 20 on the Survey officer arriving at his decision. **GOPAL KRISHNA PARACHURE v. SAKHOJIRAV** . . . I. L. R., 18 Bom., 133

3. — and ss. 18 and 33—*Entries made by Settlement officer in a form headed as issued under Bombay Survey and Settlement (Khoti) Act (Bom. Act I of 1865) when Bom. Act I of 1880 was in force—Finality of the entry as to the liability of the tenant—Occupancy-tenant—Jurisdiction of Civil Court.*—At a time when the Khoti Act (Bombay Act I of 1865) had been repealed and the Khoti Settlement Act (Bombay Act I of 1880) had come into operation, the Survey officer made, in a form which was headed as being issued under Act I of 1865, entries of rent payable by the occupancy-tenant to the khot with regard to some survey numbers of a fixed amount of grain, and with respect to one survey number as held rent-free, instead of a fixed share of the gross annual produce of the land as directed in the second paragraph of cl. (c) of s. 33 of the Khoti Settlement Act, without recording that the rent had been so fixed by agreement.—*Held* that the entries of the rent payable by the occupancy-tenants were duly made under s. 17 of the Khoti Settlement Act according to the provisions of s. 33 so as to make them conclusive and final evidence of the tenant's liability, which it was not open to a Civil Court to question. **BALAJI RAGHUNATH v. BAL BIN RAGHOJI**

[I. L. R., 21 Bom., 235]

4. — and ss. 20, 21, and 33—*Entry in the Settlement officer's record, Effect of.*—An entry by a survey officer that an occupancy tenant holds the land rent-free is not an entry under s. 17 of the Khoti Act (Bombay Act I of 1880), and not being final, it can under s. 21 be reversed or modified by a decree of a Civil Court. **Balaji Raghunath v. Bal bin Raghaji**, I. L. R., 21 Bom., 235, distinguished. **VITHAL ATMARAM v. YESA**

[I. L. R., 22 Bom., 95]

5. — and ss. 21 and 33—*Bombay Land Revenue Code (Bom. Act V of 1879), ss. 108 and 110—Entry made by Survey officer—Conclusive and final evidence—Entry specifying the amount and nature of rent.*—Under the Khoti Act (Bombay Act I of 1880), it is only an entry of the Survey officer specifying the nature and amount of rent payable to the khot by a privileged occupant, according to the provisions of s. 33, in a record made under s. 17, that is declared to be final and conclusive evidence. An entry of a Survey

plaintiff as khot was entitled to the jungle produce except timber; that in virtue of Dunlop's proclamation of 1824 the plaintiff acquired an unqualified right to the forest land in the village and timber growing on it, and that the defendant had no right to appropriate assessed or unassessed land for forest purposes, and awarded the plaintiff the sum of

KHOTI TENURE—continued.

the khot a perpetual tenant if Government in respect of all lands in the village except abana lands. *Idid* on the authority of *Tyudai v Sub-Collector of Kolaba*, 3 Bom. A C, 132, and *Ramcharitra Narainia v Collector of Mahanagar*, 7 Bom. A C, 41, that a permanent relationship was created between the Government and the khot which could not be interfered with as long as the settle-

and did in fact recover, that or not for lands reclaimed and brought under cultivation by the plaintiff. The plaintiffs claimed, on the other hand, to

6. [I. L. R., 11 Bom., 680] Proprietary right of khot to khot watal land—Right of such khot to forest

of any kind or to preserve and cut the jungle and forest trees on the lands therein. He complained that since 1855 the Collector of the district prohibited him from exercising the above alleged rights, and prayed that the obstruction might be removed, and Rs 600 awarded as damages. The plaintiff based his claim mainly on the settlement of 1788

million Lakshman Collector of Patnaori A. C. 12, 13 Bom., 534
See Secretary of State for India, S. 11 R., 23 Bom., 618

7. Managing khot's right to create tenancies—*Mapa istwa lands—Sati lands—Sana—Consolation—Fruad—A managing khot is entitled, without any express authorisation, to create tenancies in land, even though the reversionary interest in it is vested in the person whose lease he is. If such a khot himself takes up land, he can do so consistently with the conditions of the khoti tenure; for a khot, as regards lands in his private occupation, may be a tenant to him himself and, all the rest of the village was granted on khoti*

than that of a paterl The Court Judge who tried the suit held that under the settlement of 1788 the

KHOTI TENURE.

See CO-SHARERS—GENERAL RIGHTS IN JOINT PROPERTY . 8 Bom., A. C., 1

See FOREST ACT, ss. 75 AND 76.

[I. L. R., 18 Bom., 670

See LANDLORD AND TENANT—LIABILITY FOR RENT . I. L. R., 19 Bom., 528

See RIGHT OF OCCUPANCY—LOSS OR FORFEITURE OF RIGHT.

[I. L. R., 17 Bom., 677

1. ——— Proprietary rights—*Ownership of wood on village lands—Forest rights.*—The plaintiff sought to raise the question whether in virtue of his being izafadar and khot of three-fourths of a village, he was or was not proprietor of three-fourths thereof and entitled, as such proprietor, to three-fourths of the wood, including teak as well as izaili wood, growing on the village lands. His rights under the izafati title depended on two documents: one, an imperial sanad, dated in A.D. 1653; the other, a Marathi document, dated in A.D. 1722. The first was construed to confer upon the grantee, as collector of the revenue, certain perquisites, and to make hereditary a right which before had been only a personal right, with reversion to the sovereign, but not to confer any proprietary right in the village lands. By the second, all that was granted was a right to babatas or cesses, the grantee being the desai, or collector of the revenue, on behalf of the Government. Therefore it was held that the izafati title did not carry with it the proprietary right. On the question as to the khoti, it was held, without the expression of any opinion, that no khot is or can be the proprietor of the soil; that such a right is not vested in every khot. This khot of three-fourths of a village had been authorized by the Government to carry on the management as khot of the remaining fourth, and had agreed, at the time of entering into this arrangement, that he would preserve for the Government all the trees in reserves marked by survey numbers, and all the teak trees in the village. He had admitted that the Government had the power to make such reserves. It was not shown that the Government had cut down any izaili wood in the village; only that it had recovered the value of some izaili wood cut in the reserves without their leave. It was decided that the khot had not made out a title to any teak wood as against the Government, nor a claim against it in respect of the izaili wood.

NAGARDAS v. CONSERVATOR OF FORESTS, BOMBAY
[I. L. R., 4 Bom., 264
I. R., 7 I. A., 55

2. ——— Right to restoration of tenure after resumption by Government—*Conditional restoration.*—In a suit brought by a khot in 1862 to recover an hereditary share in a khoti village, which had been mortgaged by her husband in 1845, and taken directly under Government management by the Sub-Collector of Kolaba on failure by the mortgagee to pass the customary agreement (kabuliat) for the security of the revenue for the year 1851-52, the Court of first instance decreed the restoration of the khoti estate on payment by the plaintiff of any loss which may have been sustained

KHOTI TENURE—continued.

by Government during its entire management, but the District Judge in appeal modified that decree by annexing a condition that the plaintiff was to observe the engagements which had been entered into between Government and the sub-tenants of the estate through the revenue survey which had been introduced during the direct management of the village by Government. whether as regards the rates of assessment or the right of tenancy. *Held* by ARNOULD and NEWTON, J.J. (TUCKER, J., dissentiente), that plaintiff had no right to object to the condition subject to which the District Judge had allowed her claim to resume the khotship. *TAJUBAI v. SUB-COLLECTOR OF KOLABA* [3 Bom., A. C., 132

3. ——— Liability to assessment for lands while khoti village is under attachment by Government—*Bom. Act I of 1866, s. 11, cl. 1, and s. 38.*—A khot is liable to be assessed for khoti profits in respect of land in his private occupation during the time that the khoti village is under attachment by Government. *Quære*—Whether a khot in respect of such lands is a tenant within the meaning of s. 11, cl. 1, of Bombay Act I of 1866, and whether the powers in s. 38 of that Act apply to such lands. *RAMCHANDRA NARSINHA v. COLLECTOR OF RATNAGIRI* . 7 Bom., A. C., 41

4. ——— Khot's right to profits for one year when khoti village under Government attachment—*Bombay Khoti Act I of 1880—Land Revenue Code (Bom. Act V of 1879), s. 162—Right to levy profits from khoti co-sharer—Limitation.*—The position of a khot, in the villages to which the Bombay Khoti Act I of 1880 has been extended, is that of a superior holder, and in the event of attachment of his village his rights in respect of khoti profits, on his resuming the management of the village, would be regulated by s. 162 of the Revenue Code (Bombay Act V of 1879). But this rule does not hold good where the village attached is one in the Kolaba district to which the Khoti Settlement Act (I of 1880) has not been extended, unless the khots therein are sanadi or vatandar khots. Where plaintiff sued the defendant, his khoti co-sharer, to recover from him the khoti profits for the year during which the village was under Government attachment, and it was found that the Khoti Act I of 1880 was not extended to the village and that the plaintiff was not a sanadi or vatandar khot,—*Held* that the plaintiff was not entitled to recover the profits from the defendant, nor could he do so from Government under the Revenue Code, even if it had collected them for the year of attachment. The Government could not be said to have been trustee for the khots of the village. *BHIKAJI RAMCHANDRA OKE v. NIJAMALI KHAN* [I. L. R., 8 Bom., 525

5. ——— Relations of inamdars with khots—*Status of khot in the Ratnagiri district—Ownership not an essential incident of khotship—Onus—Thal.*—The plaintiffs were the inamdars of a certain village in the Ratnagiri district, which was granted to their ancestors by the Peshwa under a sanad, dated 3rd September 1878. The defendants

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LABOURERS.

See Act VIII of 1853 8 W. R., Ct. 69
14 W. R., Ct. 39
18 W. R., Ct. 63
2 H. R., A. Ct. 33
1 L. R., 1 Mad., 280
1 L. R., 7 Bom., 370
8 Bom., 171
1 L. R., 8 Mad., 370
1 L. R., 13 Mad., 351

Protector of—

See Bengal Act VI of 1865
13 H. R., A. Ct., 39

Wages of—

See Bengal Act VI of 1865
13 H. R., A. Ct., 39

LACADIVE ISLANDS

See Criminal Proceedings
1 L. R., 13 Mad., 353

LACHES

See Acquisition 1 L. R., 1 All., 83
3 Mad., 114, 270
23 W. R., 297
See Courts—Special Cases—Deat
1 L. R., 11 All., 372
See Director of Deceits—Application
for Execution and Power of Court
1 L. R., 16 All., 84
See Limitation Act 10
1 L. R., 18 Bom., 110
See Limitation Act 1877 Art 113
1 L. R., 3 Cal., 333
See Payer Council Practice of R.—
Hearing . 3 B. L. R., P. C., 10
13 Moore's L. A., 244
See Revision—Criminal Cases—Deat
See Sales in Execution of Decree—
Persons, Rights of—Generally

See Revision—Criminal Cases—Deat
Persons, Rights of—Generally
11 Bom., 183
16 H. R., A. P., 13
See Charities Act, s 15—Civil Cases
132 W. R., 623
8 Bom., A. C., 63
17 W. R., 477
18 W. R., 67
2 C. L. R., 646
See Superintendent of High Court—
Civil Proceedings Code s 622
1 L. R., 4 All., 124
1 L. R., 6 All., 124
See Transfers of Property Act, s 41

KIDNAPPING—continued
concealment of her, unless an intention of keeping
her out of view be apparent. QUEEN v. LUTHER
[6 N. W., 133

17. Girl merely stay
ing temporarily in another house—The mere cir-
cumstance of a girl, who had been kidnapped, staying
in the house of a person for a day or two, does not
warrant the conclusion that she was wrongfully con-
cealed by that person, with the object of holding any
search that might be made for her. QUEEN v.
CHURDA
5 N. W., 189
Penal Code,
§ 363, 366, 369—Illegal concealment—When a

18. QUEEN v. Isaac PARDY
7 W. R., Ct., 69
Restraint or con-

form the subject of a separate conviction and sen-
tence. QUEEN v. MURDOCK
9 N. W., 293

Penal Code. QUEEN v. SIKHENDH BUKTAR
[3 N. W. 146

1 L. R., 104
[7 W. R., Ct., 104

KISHBANDI

See Cases under Civil Proceedings Code
1852, ss 257, 258 (1850 s 206)

Suit on—

See Contract Act s 25
[1 L. R., 4 Cal., 600

KNOWLEDGE

See Cases under Acquisition
AND AIR
8 B. L. R., 85
[13 B. L. R., 406

See Complaint—Investigation of Com-
plaint and Necessary Preliminaries
[6 B. L. R., 274

KIDNAPPING—continued.

minor within the meaning of the legal acceptance of the word. *EMPRESS v. PEMANTER*

[I. L. R., 8 Calc., 971]

7. ————— *Penal Code, s. 361*
—Taking by father of minor wife from her husband—Guardianship of wife.—The husband of a Hindu girl of fifteen is her lawful guardian; and if the father of the minor takes away the girl from her husband without the latter's consent, such taking away amounts to kidnapping from lawful guardianship, even though the father may have had no criminal intention in so doing. *IN THE MATTER OF THE PETITION OF DHURONIDHUR GHOSH*

[I. L. R., 17 Calc., 298]

8. ————— *Enticing away child playing on public road—Taking from lawful guardianship.*—An enticing away of a child playing on a public road is kidnapping from lawful guardianship. *QUEEN v. OOEZERUN* . 7 W. R., Cr., 98

9. ————— *Penal Code, s. 363—Betrothed girl after marriage is broken off.*—A person who carries off, without the consent of her guardian, a girl to whom he had been betrothed by her father after the father had changed his mind and broken off the marriage, is guilty of kidnapping, punishable under s. 363 of the Penal Code. *QUEEN v. GOORODASS RAJBUNSEE* . 4 W. R., Cr., 7

10. ————— *Kidnapping from lawful guardianship—Completion of such offence—Whether a continuous offence—Constructive possession—Penal Code (Act XLV of 1860), ss. 360, 361, and 363.*—J, a minor girl, was taken away from her husband's house to the house of R, and there kept for two days. Then one M came and took her away to his own house and kept her there for twenty days, and subsequently clandestinely removed her to the house of the petitioner, and from that house the petitioner and M took her through different places to Calcutta. The petitioner was convicted under s. 363 of the Penal Code for kidnapping a girl under 16 years of age from the lawful guardianship of her husband. *Held* (by the majority of the Full Bench) that the taking away out of the guardianship of the husband was complete before the petitioner joined the principal offenders in taking the girl to Calcutta, and that the petitioner therefore could not be convicted under s. 363 of the Penal Code. *Held* further that the offence of kidnapping from lawful guardianship is complete when the minor is actually taken from lawful guardianship; it is not an offence continuing so long as she is kept out of such guardianship. *Per RAMPINI, J.*—The offence of kidnapping under s. 363 is not necessarily or in all cases complete as soon as the minor is removed from the house of the guardian; when the act of kidnapping is complete is a question of fact to be determined according to the circumstances of each case. *NEMAI CHATTERJEE v. QUEEN-EMPRESS* . I. L. R., 27 Calc., 1041 [4 C. W. N., 645]

11. ————— *Husband taking away wife—Abettors in taking away wife.*—A husband cannot be convicted of kidnapping for taking away his own

KIDNAPPING—continued.

wife, nor can those who aid him in doing so. *QUEEN v. ASKUR* . . . W. R., 1864, Cr., 12

12. ————— *Consent—Taking by force or fraud—Penal Code, s. 361.*—The consent of a kidnapped person is immaterial, and it is not necessary for a conviction, under s. 361, Penal Code, that the taking or enticing should be shown to have been by means of force or fraud. *QUEEN v. BHUNGEE AMER* . . . 2 W. R., Cr., 5

QUEEN v. AMGAD BUGHAN . 2 W. R., Cr., 61

QUEEN v. MODHOO PAUL . 3 W. R., Cr., 9

QUEEN v. KOORDAN SINGH . 3 W. R., Cr., 15

QUEEN v. SOOKHE . . . 7 W. R., Cr., 36

13. ————— *Abetment of kidnapping—Penal Code, ss. 116 and 363.*—Accused was convicted by the Magistrate of abetting the kidnapping of a minor. Accused, knowing that the minor had left home without the consent of his parents, and at the instigation of one Komaren, the actual kidnapper, undertook to convey the minor to Kandy in Ceylon and was arrested on the way thither. The Sessions Judge reversed the conviction on the ground that there was no concert between the accused and Komaren previous to the completion of the kidnapping by the latter. *Held* by the High Court that, so long as the process of taking the minor out of the keeping of his lawful guardian continued, the offence of kidnapping might be abetted, and that in the present case the conviction should be of an offence punishable under ss. 363 and 116 of the Penal Code. *REG. v. SAMIA KAUNDAN* . . . I. L. R., 1 Mad., 173

14. ————— *Penal Code (Act XLV of 1860), ss. 109, 363—Right to custody of children.*—A mother cannot have a right to the custody of her legitimate children adversely to the father. Ordinarily the custody of the mother is the custody of the father, and any removal of the children from place to place by the mother ought to be taken to be consistent with the right of the father as guardian, and not as a taking out of his keeping. But where a Hindu woman left her husband's house, taking with her her infant daughter, and went to the house of A, and on the same day the daughter was married to B, the brother of A, without the father's consent, it was held that A was rightly convicted under ss. 109 and 363 of the Penal Code of abetting the offence of kidnapping. *IN THE MATTER OF THE PETITION OF PRAN KRISHNA SURMA. EMPRESS v. PRANKRISHNA SURMA*

[I. L. R., 8 Calc., 989; 11 C. L. R., 6]

15. ————— *Concealment of kidnapped person—Penal Code, s. 368—Concealment of kidnapper.*—S. 368 of the Penal Code refers to some other party who assists in concealing any person who has been kidnapped, and not to the kidnappers. *QUEEN v. OOEJEE* . . . 6 W. R., Cr., 17

16. ————— *Penal Code, s. 368.*—The mere fact of a girl being received into a house and retained there by the owner, even after he may have become aware or found reason to believe that she had been kidnapped, does not amount to

LACHES—continued.

1. ———— *Doctrine of laches, Application of.—Suits for which period of limitation is provided.*—The equitable doctrine of laches and acquiescence does not apply to suits for which a period of limitation is provided by the Limitation Act. *RAM RAY v. RAYA RAY* . . . 2 Mad., 114

TALUCK CHUNDER BHATTACHARJEE v. HIRGO SARKER SANDAL . . . 22 W. R., 267

2. ———— *Suits for which period of limitation is provided.*—Mere laches, or indirect acquiescence short of the period prescribed by the statute of limitations, is so far to the enforcement of a right absolute vested in the plaintiff at the time of suit. *See also*—The doctrine of acquiescence or laches will apply only to cases, if such there are, in which they can be regarded as a positive extinguishment of right. When they go merely to the remedy, the Courts have no power arbitrarily to substitute an extinguishing prescription different to that determined by the Legislature. *PERBANCHULATY v. TIMBA PERDY*

[3 Mad., 270]

3. ———— *Mortgage—Limitation Act, 1859, s. 1, cl. 15—Estoppel.*—The laches of a mortgagor in taking no steps for many years to enforce his alleged rights may afford evidence against the existence of those rights, but cannot stop him from asserting them, if they do exist, at any time within the period of sixty years allowed by s. 1, cl. 15, Act XIV of 1859. On account of the plaintiff's laches, the Judicial Committee disallowed mesne profits prior to the date of the institution of the suit, which had been allowed by the High Court. *JUGGESHATH SAHOO v. SHAH MAHOMED HOSSEIN*

[14 B. L. R., 386; L. R., 21 A., 49
23 W. R., 99]

4. ———— *Suit for declaratory decree—Specific Relief Act, s. 42—Laches and delay on plaintiff's part.*—Inasmuch as in this country a period of limitation is prescribed even for suits where the grant of relief sought is within the discretion of the Court, mere lapse of time short of the period of limitation should not ordinarily be held a good ground for refusing relief to a plaintiff. *ATHIKARATH NANU MENON v. ERATHANIKAT KONT NAYAR*

[L. R., 21 Mad., 42]

5. ———— *Reversioners suing within period of limitation but after delay in knowing their rights.*—When reversioners bring their suit within the period of limitation allowed by law, delay in asserting their rights is not by itself sufficient to justify a finding that they have assented to the invasion of the right which necessitates their applying for relief. *DULLEP SINGH v. SREKISHOON PANDAY* . . . 4 N. W., 83

6. ———— *Delay in suing—Suit not barred by limitation.*—A suit in which plaintiff claimed to have a drain closed on the ground that it passed through his land, having been dismissed because the delay in bringing it amounted to consent.—*Held* that the Courts of this country have no power to refuse relief on the ground of mere delay

LACHES—continued.

where the plaintiff establishes a right not affected by limitation. *RAMPHUL SAHOO v. MISREER LALL*

[24 W. R., 97]

7. ———— *Delay in execution of decree—Interest, Right to.*—As long as a decree-holder does not incur the loss of right by limitation, he cannot be deprived of the interest which his decree gave him, on the ground of his dilatoriness in taking out execution. *MOHNOO SODDER ROY CHOWDHURY v. BUKARER ROY CHOWDHURY*

[5 W. R., Mis., 11]

8. ———— *Delay in execution of decree—Debt barred by limitation—Admission of debt.*—The decision of the Full Bench, *Bisessar Mullick v. Dhiraj Mahatab Chand Bahadoor, B. L. R., Sup. Vol., 267; 10 W. R., F. B., 8*, that a decree once barred is always barred, for the reason that no proceedings in execution can be valid if instituted after three years from the date of the last proceeding, was held to apply in a case where the admissions of a judgment-debtor were pleaded in condemnation of the decree-holder's laches in executing his decree. *BHOPUTRY LALL TEWARER v. SOOCHRE SURESH MOOKERJEE* . . . 12 W. R., 255

9. ———— *Delay in suing—Where a plaintiff sued to recover certain property as waqf on the ground that the mutwali and his ancestor (a former mutwali) had mis-conducted themselves by selling to some of the defendants the property which was the subject of the endowment, and where it appeared that the plaintiff lay by for nearly twelve years from the time when the vendees purchased and were put into possession, it was held that he was not entitled to the assistance of the Court.* *BHUNUCK CHUNDRA SAHOO v. GOLAM SHURUFF*

[10 W. R., 458]

10. ———— *Right of person guilty of laches against subsequent purchaser without notice.*—*A* bought land from *B* in 1818, entered into possession, and in 1822 went abroad. In 1853 *C* bought the same land from *B* without notice of *A*'s purchase, the land being then registered in *B*'s name. *Held*, in a suit brought in 1859, *A* could not eject *C*, having forfeited his right by his own laches. *CHIDAMBARA NAYINAN v. ANNAPA NAYKAN*

[1 Mad., 62]

But see *VIRABHADRA PILLAI v. HARI RAMA PILLAI* . . . 3 Mad., 38

11. ———— *Contract Act, 1872, ss. 13, 20—Bill of exchange—Mistake—Void agreement.*—On the 3rd March 1881 *N* drew a bill in English at Cawnpore in favour of *F* on a Calcutta firm and gave it to *F*'s agent, who did not understand English. *F*'s agent kept the bill till the 10th March 1881 without ascertaining its nature. On that date the Calcutta firm on which the bill was drawn became insolvent. *F* subsequently sued *N* for the money he had paid for the bill on the ground that his agent had asked *N* for a bill drawn on himself and not one drawn on the Calcutta firm. *N* asserted in defence to the suit that *F*'s agent had not asked for a bill drawn on himself, but merely for a bill on Calcutta. *Held* that, assuming that the sale of the

LAND ACQUISITION ACT (X OF 1870)

—continued—

1. — a 11.—*Ascertainment of value and order of compensation*—Land given as compensation—*Wad Reg II of 1803 s 44—Distracted titles—Collector, Power of*—The owner of certain land taken up under the Land Acquisition Act, after the amount of compensation had been fixed

LAND ACQUISITION ACT (X OF 1870)

See BOMBAY CIVIL COURTS ACT, s 16

[I. L. R., 16 Bom., 277

See GUARDIAN—DEEDS AND POWERS OF

GUARDIANS I. L. R., 18 Cal., 89

[I. L. R., 17 I. A., 80

See LAYBAND AND TIKATY—BUILDING

OF LAND, RIGHT TO KUMOV, AND COL-

PEATION FOR KIROVSKY

[I. L. R., 23 Cal., 820

See HES JUDICARY—EXPOSURE BY JUDG

MENT I. L. R., 20 Mad., 269

Sale of mortgaged land under—

See THAKERN OF PROPERTY ACT s 68

[I. L. R., 13 Mad., 321

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decisions in certain cases only The High Court

consequently has the power of superintendence over

those Courts under s. 17 of 21 s 20 Act, c 104 In

THE MATTER OF THE PETITION OF ARBOOL AT

[16 I. L. R., 197

ARBOOL AT v. FERNER FERNER v. ARBOOL AT

[23 W. R., 73, 239

2. —

Award of compensation awarded from

order irregularly made—The Land Acquisition Act

forced against the Collector—Appeal from an

order irregularly made—The Land Acquisition Act

such a statutory liability, when imposed upon a

Collector or other civil officer, by means of execution

proceedings without a suit The ordinary mode of

enforcing such an obligation is by and unless the

Legislature when it creates the obligation prescribes

such other means of enforcing it

GARNISH NAIV v. Collector of THANA

Value of works on land used for salt first—

s 3 and s 24 and 25—Land

[I. L. R., 17 Mad., 371

See EXECUTION OF DECREE—MODE OR

EXECUTION—MORTGAGE

[I. L. R., 16 AP., 78

8

pieces or violation and not an irregularity in the

exercise of jurisdiction Joseph v. Salt Co

ment in which his share was valued at Rs 75

It is that the valuation of the plaintiff's husband's

share in that instrument of 1872 was not binding on

the plaintiff in the present suit. Chow v. Datta

[I. L. R., 14 Mad., 48

as 13, 24, and 25—Valuation of

land acquired for public purposes—Time of acqui-

sition—Award of compensation—When land has

been acquired under the provisions of the Land

Acquisition Act, 1870, changes in its condition

between the time of such acquisition and that of

the actual conclusion of the award of compensation,

are not to increase or lessen the valuation. The

provision in s 25 points to ascertaining the value

at the time when the land is acquired the right to

compensate on being simultaneous with the right to the

land attaching to the claim the right to certain plots of

land attached to the Government, the sub-soil had

no market value from the time when the means of

the roads, still no market value had been shown to

belong to that sub-soil within the meaning of

s 13 and 24 of the Land Acquisition Act, 1870, as

LACHES—concluded.

that the plaintiff might register it, the plaintiff having already lost, by his own laches, the right to register the original certificate. **LALBHAI LAKHIM-DAS v. KAMALUDIN HUSEN KIRAN**. 12 Bom., 247

31. ————— *Presumption against persons who do not enforce their rights—Unexplained delay—Disturbance of long possession—Dispute as to char lands.*—The presumption that usually arises against those who slumber on their rights is the stronger when applied to rights, the subject-matter of which (as in the case of churs) is in a constant state of change, and the proof of which is rendered more than usually difficult by lapse of time. In this case plaintiff sought to oust from possession persons who had enjoyed the property in question from 1835 to the present time; and as he was responsible for nearly twenty years of that delay, the Privy Council required to be satisfied by clear proof of the grounds which he alleged for disturbing a possession of such long continuance, and were of opinion that plaintiff had failed to prove his case, inasmuch as he had not proved the lands which had re-formed (if lands had re-formed in the bed of the river) to have been the same as those which belonged to his predecessors and had been diluviated, nor had he proved his title upon the ground of the *locus in quo* being an accretion to any lands of which he was possessed. **SHAM CHAND BYSACK v. KISHEN PROSAUD SURMA**.
[18 W. R., 4; 14 Moore's I. A., 595]

"LAND."

See JURISDICTION OF CIVIL COURT—MUNICIPAL BODIES.

[I. L. R., 24 Bom., 600]

See PRESCRIPTION—EASEMENTS—LAND.

[I. L. R., 18 All., 178
I. L. R., 17 All., 87]

Acquisition of—

See BENGAL TENANCY ACT, s. 84.

[I. L. R., 18 Calc., 271]

See LAND ACQUISITION ACTS.

See RAILWAY COMPANY 10 B. L. R., 241

See STATUTES, CONSTRUCTION OF.

[12 Bom., 250]

belonging to Government.

See BOMBAY SURVEY AND SETTLEMENT ACT, 1865, ss. 35, 48.

[I. L. R., 1 Bom., 352]

covered with buildings, Suit for rent of—

See CASES UNDER ENHANCEMENT OF RENT—LIABILITY TO ENHANCEMENT—LANDS OCCUPIED BY BUILDINGS AND GARDENS.

See CASES UNDER RENT, SUIT FOR.

Exchange of—

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION. I. L. R., 21 Bom., 396

"LAND"—concluded.

See SALE FOR ARREARS OF RENT—INCUMBRANCES I. L. R., 23 Calc., 254

for building purposes.

See CASES UNDER ENHANCEMENT OF RENT—LIABILITY TO ENHANCEMENT—LANDS OCCUPIED BY BUILDINGS AND GARDENS.

reclaimed from the sea.

Dock, Construction of.

—The plaintiff demised to the defendants for a term of 999 years certain lands a portion of which, A, was liable to an annual rent of Rs500 per acre. For the other portion, B, which was described in the lease as "being at times covered by the sea," a nominal rent of Rs1 per acre per annum was reserved. The lease contained a power to the lessees "to reclaim from the sea" the whole or any portion of B, and provided that upon such reclamation the lessees should pay for any portion of B which they might "reclaim from the sea" an enhanced rent at the rate of Rs500 per acre per annum. The lessees also had power under their lease to dig or excavate any portion of the demised lands, and to remove the soil therefrom. The lessees thereupon excavated a portion of B, and thus turned it into a dock, at the entrance of which they constructed gates, by means of which they could in a measure, but not entirely, control the flow of sea water into the dock. The defendants charged nothing for the use of the dock, but for the use of the wharves round it they charged a fee. *Held* that the expression "to reclaim from the sea" signifying, in its primary and ordinary sense, the conversion of the reclaimed land into dry land, by rendering it secure from the ingress of the sea, with the view to its being used as such, the construction of the dock was not such reclamation as was contemplated in the lease, and therefore the enhanced rent of Rs500 per acre could not be charged for the water area of the dock. **SECRETARY OF STATE FOR INDIA v. SASSOON**. I. L. R., 1 Bom., 513

Re-formation of—

See CASES UNDER ACCRETION.

Suit for—

See CASES UNDER JURISDICTION—SUITS FOR LAND.

LAND ACQUISITION ACT (VI OF 1857).

See APPEAL—ACTS—LAND ACQUISITION ACT.

See CASES UNDER ARBITRATION—ARBITRATION UNDER SPECIAL ACTS AND REGULATIONS—ACT VI OF 1857.

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—TORTS.

[6 Bom., A. C., 116]

See DAMAGES—SUITS FOR DAMAGES—BREACH OF CONTRACT. 3 W. R., 327

See CASES UNDER LAND ACQUISITION ACT (X OF 1870).

See LIMITATION ACT, 1877, s. 19 (1859, s. 4)—ACKNOWLEDGMENT OF DEBTS.

[11 W. R., 1]

—continued

rate of six per cent per annum, now as
equal to the ascertained annual rental of the pre-
mises after deducting the amount necessarily ex-
pended for annual repairs. **CASEY v. BARNY MITRA**
10 Bom., 34

In the case of the former the income yielded was
taken into account with a view to consider the
number of years' purchase to be allowed for the
land, and, in estimating the value of the godown
yielded a deduction was made for the chance
of some of them being unoccupied for part of the
year as well as for particular repairs and municipal
taxes. In the case of unoccupied land, it was held
that the thing to be looked at was not the cost of
what had been done to preserve the land or the
money spent on improvements, but the market value
at the time, with an allowance for the manner in
which the land was taken from the claimant. **COT-
TECTOR v. MOONJEE v. HAS KUNISTO MOONJEE**
123 W. N. 234

3. Principle on which com-
pensation is given—Market value of property—
Where Government takes property from private
persons under statutory powers it is only right that
those persons should obtain such a measure of com-
pensation as will enable them to purchase other
property of equal value. Principle on which com-
pensation is given—Market value of property—

4. Principle on which com-
pensation is given—Market value of property—

—continued

has been held, further, that a person who is
appointed an assessor under s. 10 of the Land
Acquisition Act performs quasi-judicial functions
and is therefore incompetent to testify as a witness
in the same proceedings. **DWANIBAO v. COLLECTOR**
or DWANIBAO
11 Bom., 289

1. Determination of amount
of compensation—Assessor, Non appearance of—
Claimant, Non appearance of—Pleader, Non ap-
pearance of— Where, in a compensation case before
an assessor, the Court should appoint either
or appoint others, the Court should appoint either
assessors in the place of those who were not in
attendance. **IN THE MATTER OF THE ERTIOU OR**
RAMJI DAST v. SECRETARY OF STATE FOR INDIA
L. I. R., 17 Cal., 380

2. Determination of amount
of compensation—Assessor, Non appearance of—
Claimant, Non appearance of—Pleader, Non ap-
pearance of— Where, in a compensation case before
an assessor, the Court should appoint either
or appoint others, the Court should appoint either
assessors in the place of those who were not in
attendance. **IN THE MATTER OF THE ERTIOU OR**
RAMJI DAST v. SECRETARY OF STATE FOR INDIA
L. I. R., 17 Cal., 380

24. Principles on which com-
pensation is given—Market value of property—
Where Government takes property from private
persons under statutory powers it is only right that
those persons should obtain such a measure of com-
pensation as will enable them to purchase other
property of equal value. Principle on which com-
pensation is given—Market value of property—

LAND ACQUISITION ACT (X OF 1870)

—continued.

the time of the right therein attaching to the Government for a public purpose ; therefore compensation had been rightly disallowed. *MANMATHA NATH MITTER v. SECRETARY OF STATE FOR INDIA*

[I. L. R., 25 Calc., 194

I. R., 24 I. A., 177

1 C. W. N., 693

s. 15.

See APPEAL—ACTS—LAND ACQUISITION ACT . . . I. L. R., 16 Bom., 525

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

[I. L. R., 9 Calc., 838

1. ———— *Reference by Collector to District Court—Land claimed by Collector on behalf of Government or Municipality.*—The scope and object of the Land Acquisition Act (X of 1870) is to provide a speedy method for deciding the amount of the compensation payable by the Collector, when such amount is disputed, and the person or persons to whom it is payable. S. 15 of the Land Acquisition Act contemplates a reference when the question of the title to the land arises between the claimants who appear in response to the notice issued under s. 9, and who set up conflicting claims one against another as to the land required, which the District Judge as between such persons can determine. The Collector has no power to make a reference to the District Judge under s. 15 in cases in which he claims the land in question on behalf of Government or the Municipality, and denies the title of other claimants, and the District Judge has no jurisdiction to entertain or determine such reference. *IMDAD ALI KHAN v. COLLECTOR OF FARAKHABAD* I. L. R., 7 All., 817

2. ———— *Reference by Collector to Judge Land in respect of which reference is made claimed by Collector on behalf of Government.*—The Collector has no power to make a reference to the District Judge under s. 15 of Act X of 1870 in cases in which he claims the land, in respect of which such reference is made, on behalf of Government, and denies the title of other claimants, and the District Judge has no jurisdiction to entertain or determine such reference. *Imdad Ali Khan v. Collector of Farakhabad*, I. L. R., 7 All., 817, followed. *CROWN BREWERY, MUSSOORIE v. COLLECTOR OF DEHRA DUN* . . . I. L. R., 19 All., 339

3. ———— and ss. 38 and 55—*District Court, Powers of—Compensation, its principle and measure—Lands severed from a factory.*—The Land Acquisition Act provides for two classes of reference to the Judge, one to assess compensation under s. 15 and the other to apportion compensation under s. 38. The power of the District Court is limited to the determination of these questions and questions of title incidental thereto. There is no power in the Judge or the High Court in appeal to decide on any such reference a question arising under s. 15. Land taken under the Act is taken discharged of all easements, and the loss of easements must be taken into

LAND ACQUISITION ACT (X OF 1870)

—continued.

account in assessing compensation for injurious affection. *TAYLOR v. COLLECTOR OF PURNEA*

[I. L. R., 14 Calc., 423

1. ———— ss. 16 and 17—*Act VI of 1857, s. 8—Acquisition of land by Government—Right of way.*—When land is taken by the Government under Act VI of 1857, the land is absolutely vested in the Government under s. 8, free from any right of way previously enjoyed by the public over such land. IN THE MATTER OF THE PETITION OF FENWICK

[6 B. L. R., Ap., 47: 14 W. R., Cr., 72

2. ———— *Act VI of 1857, s. 8—Right of way.*—A right of way cannot by the provisions of Act VI of 1857 continue to exist over land acquired by a railway company under that Act with the aid of Government. If, however, the railway company by their representations and conduct lay themselves under legal obligation to provide a way, such obligation may be enforced. *COLLECTOR OF THE 24-PERGUNNAHS v. NOBIN CHUNDER GHOSE*

[3 W. R., 27

1. ———— s. 19—*Assessor—Qualified assessor—Bias.*—The Municipality of Poona wishing to take up the applicant's land, the Collector of Poona determined the amount of compensation, and tendered it to the applicant, who declined to accept it. The Collector thereupon referred the matter to the District Judge. Two assessors were appointed to aid him, one by the applicant and another by the Collector. The nominee of the Collector was the Mamlatdar of Poona, a rate-payer and *ex-officio* member of the Municipality, who, whilst a member of the managing committee, had unsuccessfully negotiated with the applicant for the purchase of the ground. The District Judge made an award upholding the Collector's valuation. Held that the award was bad and must be set aside, as the Collector's nominee had, under the circumstances, a real bias, and was not a qualified assessor within the meaning of s. 19 of the Land Acquisition Act (X of 1870). *KASHI-NATH KHARGIVALA v. COLLECTOR OF POONA*

[I. L. R., 8 Bom., 553

2. ———— *Assessor, Appointment of—Disqualifications in an assessor—Bias—Objections to assessor's appointment not raised in time—Waiver—Effect on minor o*

Court.—Certain land belonging to the applicant, a minor, was taken by the Municipality of Hubli under the Land Acquisition Act (X of 1870). The Mamlatdar of Hubli, who was an *ex-officio* member of the Municipal Committee, took part in the negotiations for the purchase of the land. He also gave evidence as to its value in the inquiry before the Collector. As the price offered by the Collector was not accepted by the applicant, the matter was referred to the District Judge, under s. 15 of the Act, for the purpose of determining the amount of compensation. On this reference the Mamlatdar acted as an assessor appointed by the Collector, and was also examined as a witness as to the value of the land. But no objection was taken

under Regulation XXIX of 1814, an interest in such lands. *MUGGERKOTI MOODER v. JAGAN JYUKAN KHAN* 18 W. R., 81

prove his title to it. *ISSAR CHANDER HANJER v. SOTTO DEAL HANJER* 12 W. R., 270

6. — Compensation, Apportionment of—*Party in possession—Land taken for railway—When a railway company takes land for public purposes, the party in possession at the time is entitled to the money paid for it, until some one else establishes a prior claim.* *CHAND CHATTERJEE v. HINDOO HEDDER HANJER* [10 W. R., 48]

7. — Compensation, Apportionment of—*Land taken for railway—Where lands are taken compulsorily, the principle upon which the amount of compensation is divisible amongst the zamindar and the holders of several subordinate tenures is by ascertaining the value of the interest of each holder of a tenure, and to give him a sum equivalent to the purchase-money of such interest.* *GOMPOY, BIVART & Co v. MONARAY CHANDER* [Marsh, 480; 2 Hay, 665]

8. — Compensation, Apportionment of—*Land taken for railway—Where lands are taken compulsorily, the principle upon which the amount of compensation is divisible amongst the zamindar and the holders of several subordinate tenures is by ascertaining the value of the interest of each holder of a tenure, and to give him a sum equivalent to the purchase-money of such interest.* *GOMPOY, BIVART & Co v. MONARAY CHANDER* [Marsh, 480; 2 Hay, 665]

10. — Compensation, Apportionment of—*Land taken for railway—Where lands are taken compulsorily, the principle upon which the amount of compensation is divisible amongst the zamindar and the holders of several subordinate tenures is by ascertaining the value of the interest of each holder of a tenure, and to give him a sum equivalent to the purchase-money of such interest.* *GOMPOY, BIVART & Co v. MONARAY CHANDER* [Marsh, 480; 2 Hay, 665]

11. — Compensation, Apportionment of—*Land taken for railway—Where lands are taken compulsorily, the principle upon which the amount of compensation is divisible amongst the zamindar and the holders of several subordinate tenures is by ascertaining the value of the interest of each holder of a tenure, and to give him a sum equivalent to the purchase-money of such interest.* *GOMPOY, BIVART & Co v. MONARAY CHANDER* [Marsh, 480; 2 Hay, 665]

13 W. R., 189

12 W. R., 136

13 W. R., 189

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LAND ACQUISITION ACT (X OF 1870) —continued.

5. ————— and s. 25—*Compensation—Mode of determining the amount of compensation to be given—Land in vicinity of town where building is going on—Market-value at time of awarding compensation, Meaning of.*—The recognized modes of ascertaining the value of land for the purpose of determining the amount of compensation to be allowed under the Land Acquisition Act (X of 1870) are—(1) If a part or parts of the land taken up has or have been previously sold, such sales are taken as a fair basis upon which making all proper allowances for situation, etc., to determine the value of that taken. (2) To ascertain the net annual income of the land, and to deduce its value by allowing a certain number of years' purchase of such income according to the nature of the property. (3) To find out the prices at which lands in the vicinity have been sold and purchased, and making all due allowance for situation, to deduce from such sales the price which the land in question will probably fetch if offered to the public. In the case of land in the vicinity of a town where building is going on, it would be unjust to adopt the second of the above methods if there is a fair probability of the owner being able, owing to its situation, to sell or lease his land for building purposes. The value of land should be determined, not necessarily according to its present disposition, but laid out in the most lucrative and advantageous way in which the owner can dispose of it. The market value "at the time of awarding compensation" may fairly be taken to mean "at the time when proceedings under the Act are taken." *IN THE MATTER OF THE LAND ACQUISITION ACT (X OF 1870). IN THE MATTER OF MUNJI KHETSEY . I. L. R., 15 Bom., 279*

6. ————— and ss. 25, 15, 42—*Compensation—Mode of assessment—Antiquities not proved to have any market-value—Quarries—Persons interested in the land acquired.*—The Government having, under the Land Acquisition Act (X of 1870), commenced proceedings to acquire a plot of land containing granite quarries besides ancient temples and sculpture, a reference was made to the District Judge (ss. 15, 18) as to the amount of the compensation to persons interested in the land. *Held* (1) with regard to the nature of the property that only the value of the stone quarries as yielding profit could form the subject of assessment, and the value of the antiquities could not; for, under the circumstances, no market value could be assigned to the antiquities; (2) the right, if not the only, course of proceeding was to estimate the rent at which possibly the whole plot might be leased, on the basis of how much rent a portion of the plot when leased for quarries had in fact obtained for the zamindar; (3) to calculate the purchase-money, as the first Court had done, at twenty-five years of such rent was proper, and no reason appeared for reducing this number of years to fifteen; (4) though quarrymen had been employed, and had earned money, on the plot, they were not interested therein, in the sense intended

LAND ACQUISITION ACT (X OF 1870) —continued.

by the Act; and their earnings, in which the zamindar was not interested, could not enter into the question of compensation and increase the award; (5) under s. 42, fifteen per cent. was to be paid on the sum awarded. *SECRETARY OF STATE FOR INDIA v. SHANMUGARAYA MUDALIAR*

[I. L. R., 18 Mad., 369
L. R., 20 I. A., 80

1. ————— s. 35—*Appeal—Difference of opinion between Judge and assessors—"Amount of compensation."*—The "amount of compensation" in s. 24, Act X of 1870, must be taken to mean the whole amount of the award, and not the amount of the different items to be taken into consideration separately under that section; therefore, where the Judge differed wholly from one assessor, and differed from the other assessor in the amounts awarded for the different items, but agreed with him in the total amount awarded,—*Held* there was not such a difference of opinion between the Judge and both assessors as to give a right of appeal from the Judge's decision under s. 35. *ANANDAKRISHNA ROSE v. VERNER . 13 B. L. R., 300: 22 W. R., 305*

2. ————— *Appeal—Appeal from decision of Judge and assessors—Collection charges, Amount of, to be deducted in cases of mokurari lease.*—In a case under the Land Acquisition Act, if there be a difference of opinion between the Judge and the assessors, or any of them, upon a question of law or practice or usage having the force of law, but ultimately they agree upon the amount of compensation, s. 28 must be taken to apply, and no appeal will lie against the decision of the Court with reference to the point upon which the Court and the assessors differed. If, however, in addition to differing upon any question of law, etc., they ultimately differ also as to the amount of compensation to be awarded, s. 28 does not apply, but under s. 35, coupled with s. 30, in such a case an appeal will lie, and in such appeal all questions decided by the lower Court, whether the opinion of the assessors coincided with that of the Judge or not upon these questions, are open to the parties in the Appellate Court. *SECRETARY OF STATE FOR INDIA v. SHAM BAHADOOR . I. L. R., 10 Calc., 769*

3. ————— *Appeal—Difference of opinion between Judge and assessors—Compensation.*—Under s. 30, Act X of 1870, an appeal lies from the decision of the Judge where he differs from the assessors, whether the assessors agree with one another or not. *IN THE MATTER OF THE LAND ACQUISITION ACT (X OF 1870). HEYSHAM v. BHOJANATH MULLICK. BHOJANATH MULLICK v. HEYSHAM . 11 B. L. R., 230: 17 W. R., 221*

4. ————— *Appeal—"District Judge"*—*Officer specially appointed under Act X of 1870—Costs.*—An appeal from the decision of a judicial officer appointed to exercise the functions of a Judge under Act X of 1870 within the town of Calcutta lies to the High Court sitting to hear appeals from decisions by the Court in its original civil jurisdiction. The words "District Judge" in

LAND ACQUISITION ACT (X OF 1870)

—continued.
applicable to all cases, and in the absence of any

payable in respect thereof, with 15 per cent for compulsory sale, and the balance to the tenant-holder
Golan Ali v. Nali Krishna Thakur, I. L. R. 7
Horsean Mills Company, I. L. R., 11 Cal., 698

21. Compensation, award of
Frontage and back sites—Parties—License of

of a square enclosed and surrounded by houses on all
sides, except towards the south, on which side it
opened upon a large unoccupied area of garden land
also belonging to the estate. The second and third
claimants were the lessees of Kashiabhai. The said
land was taken up by the Collector of Poona on
behalf of the municipality of that city for the
purpose of erecting a central market. The claim
ant having declined to receive Rs 1,550 offered to him
as compensation, the Collector referred the matter to
the District Judge, who, after deducting 21,532
square feet from the measurement of the whole land
for roads, divided the rest, on the principle of
frontage and back sites, in the proportion of one to
three, apportioning it at the average rate of 10,000
per square foot, and some at less than one anna
this award for the land was Rs 674 for the land above,
the remainder of frontage and back sites

the Act. In so far as it was not objected to its

LAND ACQUISITION ACT (X OF 1870)

—continued

being tried in appeal, they could be awarded reason-
able damages and Rs 1,200 was ample compensation to
them. Collector of Poona v. Kashi Nath Khosla—
I. L. R., 10 Bom., 666

22. and s. 40—Proceedings
under—Finality.—In proceedings under the Land
Acquisition Act (X of 1870), ss. 38 and 39, the
person is entitled to take land compulsorily deal only
with those who are in possession of it, or who are
ostensibly its owners. It may happen that the real
owner, being an infant, or a person otherwise under
disability, does not appear, and is not dealt with in
the first instance. There is therefore a proviso in
s. 40 to the effect that nothing contained in that
or the preceding sections "shall affect the liability
of any person who may receive the whole, or any part,
of any compensation awarded under the Act to pay
the same to the person lawfully entitled thereto
this applies only to persons whose rights have
not been dealt with in adjudications in pursuance of
ss. 38, 39, and 40, and does not permit a person whose
claim has been disposed of in the manner pointed out
in the Act to have that claim re-opened, and again
heard, in another suit. Nilgovi Sion and
Bharadva v. Ray Bahadur Rai
I. L. R., 7 Cal., 388; 10 C. L. R., 393
I. R., 81 A, 80

23. Settlement of amount of
compensation—Apportionment of compensation,
Notice of proceedings for—Right of suit to recover
share of compensation.—The apportionment of the
compensation under s. 39 of Act X of 1870 is in—
I. L. R., 38

24. Power to award compen-
sation—No power to award the whole and tendered
by the Collector as compensation for the land above

LAND ACQUISITION ACT (X OF 1870)

—continued.

land taken by Government under the Land Acquisition Act will depend partly on the sum paid as bonus for the patni, and the relation that it bears to the probable value of the property, and partly on the amount of rent payable to the zamindar, and also the actual proceeds fr. in the cultivating tenants or under-tenants. **BENWARI LAL CHOWDHRY v. BUNOMORI DASI** **I. L. R., 14 Cal., 740**

12. ———— *Compensation, Apportionment of.*—*Held* that the principle laid down in the case published at page 328 of the Sudder Decisions for 1860 (vide foot-note) to regulate compensation for land taken for public purposes is not applicable to the division of compensation in every case. It would not provide for the case of several patnis where the land is taken from the holder of the lost tenure, and where the grantors of the several intermediate tenures have received a sum of money as a bonus for the grant. **MAHATAB CHAND BAHADOOR v. BENGAL COAL COMPANY** **10 W. R., 391**

13. ———— *Compensation, Apportionment of.*—*Compensation for land taken for public purposes.*—*Distribution of compensation.*—Where land held in patni is taken by Government for public purposes, the proper mode of settling the rights of the parties interested is to give the patnidar an abatement of his rent in proportion to the quantity of land which has been taken from him, and to compensate the zamindar for the loss of rent which he sustains. Accordingly the compensation awarded was held to have been very fairly distributed where the zamindar received a little more than sixteen years' purchase of the rent abated, and the patnidar received the remainder. When the compensation-money was in deposit with the Collector without specification of shares, the patnidar's cause of action against the zamindar was held to have arisen when the former sought to obtain his share and was prevented by the latter's not joining him or enabling him to get it. **RAYE KISSORY DOSSEE v. NILCANT DEY**

[**20 W. R., 370**]

14. ———— *Apportionment of compensation-money.*—*Zamindar.*—*Patnidar.*—*Dar-patnidar.*—*Construction of document.*—Where a patni and a dar-patni has been given of land which is afterwards acquired by the Government for public purposes under the provisions of the Land Acquisition Act, the zamindar is, generally speaking, entitled to as much of the compensation-money as the patnidar is. As a rule, raiyats having a right of occupancy in such land and the holders of the permanent interest next above the occupancy raiyats are the persons entitled to the larger portion of the compensation-money. The principles on which compensation-money should be apportioned among the different holders discussed and explained. *Construction of dar-patni lease.* **GODADHAR DASS v. DHUNPUT SINGH**

[**I. L. R., 7 Cal., 585; 9 C. L. R., 227**]

15. ———— *Act VI of 1857.*—*Compensation for land taken.*—A portion of the area of two villages having been taken under Act VI of 1857, and compensation deposited in the Collectorate, the dar-patnidar sued for the same, contending that the

LAND ACQUISITION ACT (X OF 1870)

—continued.

zamindar was entitled to twenty times the rent payable by the dar-patnidar, less expenses of collection. The zamindar claimed twenty times the profits he derived from the patnidar, less revenue paid to Government. *Held* that, as the plaintiff's calculation secured to the zamindar a more favourable result than that for which the latter himself contended, it was sufficient to decree the suit without determining the proper principle on which compensation should be allowed. **BENGAL COAL COMPANY v. MAHATAB CHUND BAHADOOR** **12 W. R., 340**

16. ———— *Distribution of compensation allowed.*—*Mirasidar.*—*Allowance for expenses of cultivation.*—No general rule can be laid down as to the tenure and rights of persons called "Uludi Sukhavasis" or "Payakaris," but, where land is taken under the Land Acquisition Act, they are clearly entitled to a proportion of the compensation granted. In ascertaining the proportionate interest of the mirasidar and uludi tenant, allowance must be made for the mirasidar's reversionary right; and when the rights of the parties are calculated on the basis of the value of the produce, allowance must be made for the expenses of cultivation. **APPASAMI MUDALI v. RANGAPPA NATTA**

[**I. L. R., 4 Mad., 367**]

17. ———— *Apportionment of compensation.*—*Landlord and tenant.*—The mode of apportionment of compensation between landlord and tenant considered. **DUNNE v. NOBO KRISHNA MOOKERJEE** **I. L. R., 17 Cal., 144**

18. ———— *Land Acquisition Act (I of 1891).*—*Superior zamindar and talukhdar.*—*Apportionment of compensation-money.*—*Landlord and tenant.*—No fixed principle can be laid down regarding the apportionment of compensation allowed by Government under Act I of 1891 between the superior zamindar and the talukhdar. Where the talukhdar's interest is of a permanent character only regarding the duration and not regarding the rent payable, the zamindar has a much larger interest than to receive the capitalized value upon the rent reserved. In this particular case, the compensation-money was equally divided between the zamindar and the talukhdar. **Dunne v. Nobo Krishna Mookerjee, I. L. R., 17 Cal., 144**, and **Godadhar Das v. Dhunput Singh, I. L. R., 7 Cal., 585**, referred to. **BIR CHUNDER MANIKHTA v. NOBIN CHUNDER DUTT**

[**2 C. W. N., 453**]

19. ———— The mode of apportionment of compensation between landlord and tenant considered. **A. M. Dunne v. Nobo Krishna Mookerjee, I. L. R., 17 Cal., 144**, and **Godadhar Dass v. Dhunput Singh, I. L. R., 7 Cal., 585**, followed. **KHETTER KRISTO MITTER v. DINENDRA NABAIN ROY** **3 C. W. N., 202**

20. ———— *Accretion to parent tenure.*—*Beng. Reg. XI of 1825, s. 4, cl. 1.*—*Rate of rent.*—*Apportionment of compensation awarded.*—The words "increase of rent to which he may be justly liable" contained in cl. 1, s. 4, Regulation XI of 1825, were not intended to lay down an inflexible rule

LAND ACQUISITION ACT (I OF 1894)

—concluded

1891 the former did not utilize him if from claiming the benefit of the increase I was not awarded by the Judge. NARIN CHANDER SARKA & JEWET COMMISSIONERS OF DISTRICT I C. W. N., 669

See VALUE INCREASE—GENERAL CLASSES
I L. R., 27 Calo, 820

—S. 54 and S 30—fear of com-

with order of appointment lies to the Ill. Court.
HARNAH BHAGAWATRAY HAY & BHAK CHANDEN VARNHANA I L. R., 23 Calo, 820

SHRO HATTAY HAI & MONNI
I L. R., 21 ALI, 354

LANDHOLDERS.

See CLASSES UNDER NARINAH HAZAT RECORDARY ACT (I III OF 1892), S. I.

LAND REGISTRATION ACT (BENGAL ACT VII OF 1876).

See OXYA OF RECORD—POSSESSION AND RECORD OF TITLE

I L. R., 8 Calo, 820

See POSSESSION—EVIDENCE OF POSSESSION

I L. R., 8 Calo, 823

See TITLE—GENERALITY

I L. R., 8 Calo, 823

—S. 7—Deduction of land

adjoining to previous—Conversion of land

regular—On a case for conversion, the court

of the nature of conversion is the first

reference made to a Court of law, and

will be found in the case of a Court of law

of the nature of conversion is the first

reference made to a Court of law, and

LAND ACQUISITION ACT (I OF 1894)

—continued

that Act For HARADE J—The District Judge

order appealed from was improperly made The

Queer—Whether an award made under the provi

s 57S of the Civil Procedure Code let XVI of 1892

Collector by execution proceeding. NIKHAYT GAV-

REN NAIK & COLLECTOR OF THANA I L. R., 23 BOM., 803

See COMPULSORY—INSTRUMENTS OF CON-

PLAINT AND NECESSARY PARTICULARS

I L. R., 27 Calo, 883

—S. 23—Compensation—Acquisition

Right to compensation for loss of a ferry or reason

of land "unlawfully affecting other property"—

Consolidation Act (18 of 1892), S. 63—The word

"acquisition," as used in s. 23 of the Land Acquisition

Act, includes the "purpose" for which the land is

taken as well as the actual taking And the words

11 App Car 45 Hopkins & Great Northern

Railway Company, L R 2 Q B D, 221 48 L J,

(Q B) 265, Rickett's Metropolitan Railway Com-

pany L R, 2 E & I A, 175, and Cooper Esq

& Action Local Board, L R, 14 App Car, 133

referred to. The District Board of Dinapore decided

a bridge over the river Tula, in consequence of

the erection of which a ferry which was used

100 cubits of the bridge and owned by the Khairat

of Dinapore, who was also the owner of the

to exist Held that the owner of the

entitled under the Land Acquisition Act

penation for the loss of the

DINAPORE & GHATA PATH 207

I L. R., 25 Calo, 823

penation before Collector—Right on appeal—

LAND ACQUISITION ACT (X OF 1870)

—continued.

high-water mark ; but they should have determined what was a proper compensation for each description of land. IN THE MATTER OF THE PETITION OF ABDOOL ALI 15 B. L. R., 197

S. C. ABDOOL ALI v. VERNER. VERNER v. ABDOOL ALI 23 W. R., 73, 239

25. ———— *Award of compensation—Question of title.*—Where, in a suit for the recovery of the money awarded by Government for some land acquired for public purposes, the Judge, instead of deciding as between the parties in possession the money value of their respective rights, determined as between the persons in possession and others whose claims had remained dormant until the acquisition of the land the relative strength of their titles,—*Held* that the order of the Judge was *ultra vires*, his duty under the Land Acquisition Act being to determine the money value of ascertained interests, and not to try questions of title. GOUR RAM CHUNDER v. SONATUN DOSS 25 W. R., 320

26. ———— *Apportionment of compensation—Question of title.*—Under s. 39 of the Land Acquisition Act, it is the duty of the Judge in apportioning the compensation-money which he is directed to apportion to decide the question of title between all persons claiming a share of the money. *Semble*—No decision under the Land Acquisition Act should be treated as *res judicata* with respect to the title to the other parts of the property belonging to persons who may come before the Judge under s. 39. NOBODDEP CHUNDER CHOWDHRY v. BOOPENDRO LALL ROY

[I. L. R., 7 Calc., 406; 9 C. L. R., 117

27. ———— *Judge appointed under s. 3.—Power of Judge to give costs.*—A Judge appointed under s. 3 of Act X of 1870 to perform the functions of a Judge under the said Act generally within the local limits of the ordinary original jurisdiction of the High Court has no power to award costs in respect of proceedings under s. 39, Part IV of the Act. RAMANJEM NAIDOO v. RUNGIAH NAIDOO 8 Mad., 192

s. 55 (Act VI of 1857, s. 32).

See ARBITRATION—ARBITRATION UNDER SPECIAL ACTS AND REGULATIONS—ACT VI OF 1857.

See COLLECTOR . I. L. R., 16 Mad., 321

Part of property acquired for public purposes—Owner desiring that the whole shall be acquired—Right of owner not confined to small or confined areas—Convenience of owner not the test.—The Local Government having appropriated for public purposes under the Land Acquisition Act (X of 1870) some of the out-houses attached to a dwelling-house, and part of the compound in which they were situate, without taking the house with its other out-houses or appurtenances, or the rest of the compound, the owner objected, under s. 55 of the Act, that the Government should take the whole of such property or none. *Held* applying to s. 55 the interpretation placed by the Courts in

LAND ACQUISITION ACT (X OF 1870)

—concluded.

England upon the corresponding s. 92 of the Land Clauses Consolidation Act (8 & 9 Vict., c. 18), that the section was applicable, and the objection must be allowed. *Grosvenor v. Hampstead Junction Railway Company*, 26 L. J., N. S., Ch., 731; *Cole v. West London and Crystal Palace Railway Company*, 28 L. J., Ch., 767, and *King v. Wycombe Railway Company*, 29 L. J. Ch., 462, referred to. *Held* also that the rule was not in England restricted to small or confined areas, and that the test was not whether the part appropriated could be severed from the rest of the property without inconvenience to the owner. KHAIBATI LAL v. SECRETARY OF STATE FOR INDIA

[I. L. R., 11 All., 378

— s. 58—*Award of compensation—Effect on award of suit to recover compensation from person to whom it has been awarded.*—An award under the Land Acquisition Act cannot be affected by a suit to recover from the party to whom compensation has been awarded and to have plaintiff's title declared to the land concerned. KAMINEE DEBIA v. PROTAP CHUNDER SANDYAL 25 W. R., 103

LAND ACQUISITION ACT (I OF 1894).

See MUNSIF, JURISDICTION OF.

[I. L. R., 20 Mad., 155

1. ———— s. 2, sub-s. 2—*Land Acquisition Act (X of 1870)—Act I of 1894, s. 2, sub-s. (2)—Contest before the Collector—Admission before the Judge—Increased value, s. 25, Act I of 1894.*—Whilst proceedings under Act X of 1870 were pending, the new Act I of 1894 came into operation. *Held* that having regard to s. 2, sub-s. (2), Act I of 1894, the case must be governed by the new Act. *Balaram Bhramaratat Ray v. Sham Sunder Narendra*, I. L. R., 23 Calc., 526, followed. NOBIN CHUNDER SARMA v. DEPUTY COMMISSIONER OF SYLHET

[I. C. W. N., 562

2. ———— *Award of compensation—Payment of compensation awarded how enforced against the Collector—Appeal from an order irregularly made—Practice—Procedure.*—On the 16th February 1894, under the Land Acquisition Act (X of 1870), an award of compensation to the claimant for land acquired under that Act was made by the Assistant Judge of Thana, and he subsequently made an order directing the Collector to pay the amount with interest and costs, without, however, fixing a date for payment. On the 1st March 1894, the new Land Acquisition Act (I of 1894) came into force. On the 26th February 1895, the claimant applied to enforce payment of the amount awarded, and the then Assistant Judge (Mr. Knight) re-affirmed the previous order and directed the Collector to pay it on or before the 20th May 1896. No payment, however, was made, and the matter came before the new Judge (Mr. FitzMaurice) for final order. He held that neither under Act X of 1870 nor the new Act I of 1894 had he any power to enforce payment against

LAND REGISTRATION ACT (BENGAL ACT VII OF 1876)—*concluded*.

regarded as a person who was "required" to be registered within the meaning of the section, as he could not be registered either before or after the death of the testator, for the testator was the registered proprietor when the arrears accrued and the estate had been sold before his death. *Held per MACPHERSON, J.*—That the provisions of the Act relating to registration do not apply to the case of a person who is seeking to recover rent as the representative of a deceased proprietor whose name was registered, the rent having become due during the lifetime of that proprietor. With regard to the subsequent rents for the years 1893 and 1894, it was contended that as plaintiff No. 2 had not been registered at the time when the suit was instituted, he could not maintain the suit. *Held* that this furnished no ground for the dismissal of the suit. *Alimuddin Khan v. Hira Lall Sen*, 1 L. R., 23 Cal., 87, and *Harehkrishna Dass v. Brindaban Shaha*, 1 C. W. N., 712, followed. *BELOCHAMBERS v. HASSAN ALI MIRZA*, 2 C. W. N., 493

s. 89.

See LIMITATION ACT, 1877, ART. 14.

[I. L. R., 10 Cal., 525

See RELIEF . I. L. R., 10 Cal., 525

LAND REVENUE.

See CASES UNDER N.-W. P. LAND REVENUE ACT (XIX OF 1873).

See SETTLEMENT—CONSTRUCTION.

[I. L. R., 17 Bom., 407

1. ——— Liability of lands in Kanara district to revenue—*Maxim, "Nullum tempus occurrit regi."*—*Bom. Act VII of 1863, s. 21—Bom. Reg. XVII of 1827, ss. 4 and 7—Bom. Act I of 1865, ss. 25 and 49.*—The mulavargdar, a holder of land on muli tenure in Kanara, enjoys an hereditary and transferable property in the soil and cannot be ousted so long as he pays the land revenue assessed upon his land. In the absence of special terms to the contrary, Government may enhance the land revenue payable in respect of land so held. The history of the land revenue in Kanara narrated. The question of the cultivating raiyat's property in the soil considered both with reference to the Hindu and the Mahomedan law. Similarity of the mirasi, kani yatchi, the janmakari, the swasthyau, and the muli tenures mentioned. The rule of the Hindu and Mahomedan as well as of the English law is *nullum tempus occurrit regi*. The extent to which that maxim has been restrained by legislation in the Presidency of Bombay considered. Construction of Bombay Act VII of 1863, s. 21, and Bombay Act I of 1865, ss. 25 and 49. The revenue system of Akbar under Todar Mul and of Aurangzeb discussed. If there be no specific limit, either by grant, contract, or law, to the right of Government to assess land for the purpose of land revenue, the Civil Courts have no jurisdiction under Bombay Regulation XVII of 1827, ss. 4 and 7, to entertain a suit to rectify the assessment made by the Collector or other competent Revenue authority. *VYAKUNTA BAPUJI v. GOVERNMENT OF BOMBAY*, 12 Bom., Ap., J

LAND REVENUE—*continued*.

2. ——— Liability to land revenue of village of Kabilpur in district of Surat—*Maxim "Nullum tempus occurrit regi"*—*Bom. Act VII of 1863, s. 21—Bom. Act I of 1865, ss. 25 and 49—Bom. Reg. XVII of 1827, ss. 2 and 8.*—The jurisdiction of the Civil Courts, in the Presidency of Bombay, in matters of revenue and land assessment considered and defined. The enactments limiting the operation, in the Presidency of Bombay, of the maxim *nullum tempus occurrit regi* considered. The land tenures of the district of Surat described. The village of Kabilpur in the district of Surat is an udhad budhijana village settled for hereditarily and of right by the co-sharers in it in the gross at a fixed immutable rent, independent of the quantity of land under cultivation, payable to Government, and as such falls, in respect of the joint liability of the holders for the revenue in gross, within s. 8 of Regulation XVII of 1827. The village of Kabilpur is land situated in a district ceded by the Peshwa in 1802 to the British, held by the co-sharers in it and their predecessors in title partially exempt from payment of land revenue, under a tenure recognized by the custom of the country, for more than thirty years, and therefore falls within the claims for exemption mentioned in Bombay Act VII of 1863, s. 21. Whether s. 2, cl. 1, and s. 8 of Regulation XVII of 1827, and s. 21 of Bombay Act VII of 1863 are or are not controlled by Bombay Act I of 1865, the village of Kabilpur is liable to assessment to the extent of Rs. 1,059-13-1 only, inasmuch as it falls within the concluding proviso in Bombay Act I of 1865, saving from further assessment a village entered in the land register as partially exempt from payment of land revenue. Comparison of this (the Kabilpur) case with that of Kanara—*Vyakunta Babuji v. Government of Bombay*, 12 Bom., Ap., 1. *GOVERNMENT OF BOMBAY v. HARIDHAI MONDHAI*

[12 Bom., Ap., 225

3. ——— Exemption from assessment—*Wanta or rent-free lands—Summary settlement—Bom. Act VII of 1863—Talukhdari settlement—Bom. Act VI of 1862—Right to hold wanta lands free.*—The lands in dispute, now forming part of the hamlets of Hirapur or Rasalpur, originally formed part of the talukhdari village of Kuwar. About the year 1843 the talukhdar mortgaged the lands to P, and two years afterwards, in order to pay off P, the talukhdar mortgaged the same lands to the plaintiff's father, and in or about 1858 gave him a deed of sale. On the passing of the Talukhdari Settlement Act (Bombay Act VI of 1862), the village of Kuwar was brought under its operation, and placed under Government management. While the village was under Government management, the Summary Settlement Act (Bombay Act VII of 1863) was passed, and the Talukhdari Settlement officer, acting apparently under s. 3 of the Act, made an order directing the plaintiff to pay assessment to the extent of Rs. 2,000. Part of the lands held by the plaintiff were entered in the Government khardas as wanta. In a suit brought by the plaintiff to establish his right to hold all the lands rent-free, the District Judge held that the plaintiff had failed to prove that

LAND REGISTRATION ACT (BENGAL ACT VII OF 1876)—continued

certificate of registration after the institution of the suit could therefore have no effect in validating the suit brought whilst he was an unregistered proprietor. Assuming that s. 78 of the Act was applicable to the case, the suit ought to be dismissed. The case of *Dier v. Dier* (see *v. Haydun*) was in the above view of the matter rightly decided. *Held* by PETHERAM, C.J., and PRINSEP and PIGOT JJ., in referring the case to the Full Bench that the Land Registration Act (Bengal Act VII of 1876) is applicable to properties in Calcutta. *ALIMUDDIH KHAN v. HIRA LALL SEY*. I. L. R., 23 Cal., 87

3.—*Suit for rent by unregistered proprietor—Transfer of proprietary right by succession*—S. 78 of the Land Registration Act 1876 precludes a person claiming as proprietor from suing a tenant for rent unless his name has been registered as such under the Act. It is immaterial how the transfer of proprietorship is effected, whether it is a case of transfer by purchase or a case of transfer by succession. *Surga Kant Acharya Bahadur v. Hemant Kumar*, I. L. R., 16 Cal., 706, applied. *POTUK LALL MENDAR v. THAKUR PROSAD SINGH*. I. L. R., 25 Cal., 717

4.—*Registration in regard to a share—Right to receive rent*—When some out of several proprietors of an estate, who collect the rent jointly, have registered their names under the Land Registration Act, all the proprietors are entitled to join in an action for the whole rent, but a decree will be made only in respect of the rent proportionate to the share registered. Under s. 78 of the Land Registration Act, the penalty of non-registration is the forfeiture not of the whole rent, but of the rent of the share in regard to which the landlord is unregistered. *MIEMAHUB PATRA v. ISHAY CHANDRA SINHA*. I. L. R., 25 Cal., 787

GOSINDA CHANDRA PATRA v. ISHAY CHANDRA SINGH. 3 C. W. N., 600

5.—*Suit for rent, without registration of name, whether maintainable by the legal representatives*—A suit for rent, accruing due partly during the lifetime of a registered proprietor and partly after his death, was brought by his legal representatives, the defence was that the suit was not maintainable, inasmuch as the plaintiffs were not registered proprietors and had no certificate under the Succession Certificate Act. *Held* that s. 78 of the Land Registration Act is not a bar to the suit.

Legal representatives without having their names registered under the Land Registration Act—*NAGENDRA NATH BASU v. SATADAL BASIN BASU*. I. L. R., 26 Cal., 539

See *SHERIFF v. JOSEPHAYA DAS*. I. L. R., 27 Cal., 535
decided under the Bengal Tenancy Act

LAND REGISTRATION ACT (BENGAL ACT VII OF 1876)—continued

6.—*Bengal Tenancy Act (I III of 1853), s. 60—Right of suit—Suit for rent—Unregistered proprietor*—There is nothing in s. 60 of the Bengal Tenancy Act to render a suit for rent by an unregistered proprietor null and void, it being sufficient if during the pendency of the suit and

ABDUL KHAIR v. MEHER ALI. 3 C. W. N., 381

7.—*Suit for rent—Legal representative of registered proprietor—Landlord's suit*

of the Land Registration Act before the disposal of the suit in a final decree.

MIRZA ZC H. V. J. followed. *PRAMADA PRASAD DEBI v. HANAI LAL CHANNA*

[I. L. R., 27 Cal., 178]

8.—*Suit for rent—Decree of registration of name before decree—If the decree of rent cannot be dismissed merely on the ground of the plaintiff's name not being registered under the Land Registration Act at the time the suit was brought, and it is immaterial if the name is registered before the decree is made.* *Akhan v. Hira Lall* (see I. L. R., 23 Cal., 87), explained. *HAREKRISHNA DAS v. FAKIR SINGH*. 1 C. W. N., 712

9.—*Suit for rent—Suit by tenant registered—Want of registration at the time the suit is brought—Suit not null and void*—The proprietor of two estates, numbered 922 and 923, in September 1902. On the 7th February 1903, till No. 1 was appointed receiver of the estate and power to get in arrears to the estate. In May 1903 the estate No. 927 had been sold and given to plaintiff No. 2. It was held that the suit was not null and void.

LAND TENURE IN BOMBAY*—concluded.*

enter into possession. Afterwards, in 1861, *N* alone entered into an agreement with the plaintiffs to give them a lease of that property for five years, the plaintiffs being willing to accept that lease with such title as *N* could confer. *Held* that it was unnecessary, under such circumstances, to consider whether the estate of *N* and his wife in the property was chattel real or real estate; for if it were chattel real, *N* by his marital right, according to English law (which in this case applied), might dispose, either wholly or in part, of her interest; and if the property were realty, the lease by *N* would at all events bind her for the term of five years, if *N* should so long live. Assuming the property to be realty, *semble*—that on *N*'s death before the expiration of the term of five years, the lease would, as against the wife surviving, be voidable only, and not void. The proposition laid down by the Judge of the Division Court, that all immoveable property in Bombay was of the nature of chattel real, and that there was not any property of the nature of freehold of inheritance in that island, disapproved of and denied as being irreconcilable with Royal Charters, Acts of Parliament, and of the Legislative Council of India, decisions of the Courts, both in India and England, and the tenures of land and practice of conveyancers in Bombay. The nature and results of Governor Aungiers' convention stated, and the origin of "pension and tax" in Bombay traced. The tenure of land in Bombay under the Portuguese was of a feudal character. Creation and tenure of the ancient manor of Mazagon described. Doctrine that the fief of the Middle Ages has sprung from the Roman tenure in emphyteusis mentioned. Ceremonies of enfeoffment and livery of seisin in Bombay. Statement of the circumstances which led to the passing of Stat. 9 Geo. IV, c. 33 (Fergusson's Act), and also of those which led to the passing of Act IX of 1837 (relating to the immoveable property of Parsis). *NAOROJI BERAMJI v. ROGERS*

[4 Bom., O. C., 1

LAND TENURE IN CALCUTTA.

1. ———— *Lands held in fee-simple — Unattested will, Devise by.*—Lands in the East Indies held by a tenure of the nature of fee-simple do not pass by an unattested will, but descend to the person who would be heir-at-law in England. *A* by an unattested will devised lands to *B*. *B* received the rents, and by a will, also unattested, gave the lands together with a legacy to the heir-at-law of *A*. *Held* that the heir might receive the legacy and also call for an account of the rents received by *B*. *GARDINER v. FELL* . . . 1 Moore's I. A., 299

2. ———— *Freehold land — Unattested will, Devise by.*—The tenure of land in Calcutta was of the nature of freehold, and real estate would not therefore pass by an unattested will. *FREEMAN v. FAIRLIE* . . . 1 Moore's I. A., 305

LAND TENURE IN KANARA.

1. ———— *Liability to land revenue—Maxim "Nullum tempus occurrit regi" considered.*—The mulavgardar, a holder of land on muli tenure

LAND TENURE IN KANARA—continued.

in Kanara, enjoys an hereditary and transferable property in the soil, and cannot be ousted so long as he pays the land revenue assessed upon his land. The question of the cultivating raiyat's property in the soil considered both with reference to the Hindu and Mahomedan laws. Similarity of the mirasi, kaniyatchi, the jammakari, the swasthyan, and the muli tenures mentioned. The rule of Hindu and Mahomedan as well as of the English law is *nullum tempus occurrit regi*. The extent to which that maxim has been restrained by legislation in the Presidency of Bombay considered. *VYAKUNTA BAPUJI v. GOVERNMENT OF BOMBAY* . . . 12 Bom., Ap., 1.

2. ———— *Nature of kumri cultivation—Kumri assessment—Rights of vargdars —Korlaya.*—The plaintiff sued to recover possession of four specified tracts of forest land situated in the district of North Kanara from which he alleged he had been wrongfully ejected under an order made by the Collector in 1861, and to recover certain sums of money exacted from him between 1849 and 1861 by the revenue authorities as a tax or rent for the exercise by him of his proprietary rights by way of kumri cultivation. As to three of the tracts of the land in question, the plaintiff based his claim on certain sanads alleged to have been granted by the officers of Tippu Sultan to his ancestors; and as to the fourth, he claimed a title by prescription, alleging that the land had been in the possession of his family for forty years prior to 1870, the date of the institution of the suit. The plaint contained no indication of a claim which was put forward during the argument of the appeal, that the payment to the Government of assessment in respect of kumri, pepper, and farmaish, or in particular of kumri assessment, and the entry of such charge in the chitta of a vargdar muli or geni, gives to such vargdar, or at least is a recognition by Government that such vargdar has a right of ownership in the forests in respect of which it was contended such assessment was imposed. The plaintiff admitted a right on the part of Government to take certain kinds of timber from the forests; but, subject to this, he contended that the timber, as the soil and produce of the forests generally, belonged to him, subject also to the right of Government to levy an increased assessment thereon. Subject to these rights on the part of Government, the plaintiff claimed an absolute right to have kumri cultivation carried on within the limits specified; that he and no other had a right to cultivate and give in cultivation as rice land jungle land within those limits, and an exclusive right to cut down and dispose of timber within those limits. *Held* by GREEN, J., on the evidence, that the sanads put forward were not proved to have been in fact executed by any person having authority to execute such documents, and that, even if genuine, they had never been recognized by the British Government as valid and binding or been made the foundation of the revenue relations between the British Government and the plaintiff's family or those under whom they claimed. The fact, however, that the plaintiff put forward those sanads as the root of his title, so far at least as concerned the greater portion of the

LAND REVENUE—continued

must be regarded as meaning rent free or tax free land, and that it lay upon Government to prove that land so denominated was assessable, which it had failed to do, the plaintiff therefore, as to so much of the land as was entered in the Government khardis as *rent-free*—*not* *tax-free*—*not* *assessable* with the rate of assessment fixed upon

111 Bom., Ap, 270

See also GOVERNMENT OF BOMBAY v SUNDARI SAVRAM . 12 Bom., Ap, 275

4. ——— Mode of realization—*Bom Reg XVII of 1827, s. 6—Bombay Surrey Act (I of 1865) ss 2 and 49—“Occupant”*—Regulation XVII of 1827, s. 5, enables the Government, and therefore the holder of the rights of Government, on failure of the superior holder to pay the land revenue, to realize it from the inferior holder. The laws for realizing the land revenue establish a kind of privity of estate between the superior and inferior holders by which the latter, taking the profits of the land must not

be got rid of, except through its resignation by the Sovereign or the Sovereign's representative

111 Bom., Ap

5 ——— “Farmers”—*Bom Reg XVII of 1827*—The word “farmer,” as used in Regulation XVII of 1827, is used not as a cultivator of the ground, but as a farmer of public revenue, a person who would stand between the Government and the rayats as possessors of the ground. BUTTNER EMBLER SHERIFF & COLLECTOR OF THANNA

[10 W. R., P. C. 13
11 Moore's I A, 295]

6 ——— Assessment of revenue—*Bom. Reg XVII of 1821, s. 3—Right of Government to enhance—Foras or foras toka land—Proof of right to hold at fixed rate*—The plaintiff was the holder of certain land in the Island of Bombay,

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called foras or foras toka land. He and his pre-

decessors had assessment payable in respect of the said lands was enhanced. He claimed the increase of rent not merely for the future, but also for two previous years (1870-80 and 1880-81) subsequent to the date of the Government Resolution of the 14th August 1870. The plaintiff paid under protest

right to a fixed and permanent rate of assessment, the assessment on these lands was liable to enhancement. Held also that

COLLECTOR OF BOMBAY

[11 L. R., 9 Bom., 483]

LAND REVENUE ACT (BOMBAY);

See BOMBAY LAND REVENUE ACT (V of 1879)

LAND TENURE IN BOMBAY.

Real and chattel property—*Husband and wife—Agreement by husband alone for renewal of lease—“Pension and tax”*—*Nature of Bombay land tenures—Fergusson's Act I A Geo. IV, c. 33—Act IX of 1837*—Immovable property situated in the Island of Bombay, conveyed in 1809 to N and his wife (Paris) their heirs executors administrators, and assigns, was subsequently mortgaged by N and his wife, but the mortgagee did not

LAND TENURE IN KANARA—continued.

exercise, on behalf of the Government, of its proprietary right over the timber and even the firewood in the forests in dispute from the time that the assertion of the right became a matter of appreciable consequence, and that the plaintiff's family knew this, and submitted to it, and themselves applied repeatedly for timber to the Revenue officers. From the year 1842 downwards there was no instance which effectively disproved the acquiescence of the plaintiff's family in the ownership of Government. That ownership had not been parted with at all in the opinion of the parties most interested. If it had been parted with and become vested in the plaintiff's ancestors as an integral portion of the estate in the land which the plaintiff claimed was theirs, then the assumption and the exercise of ownership by the Government over the trees from 1841 down to the filing of the suit was itself a perpetual ouster of the family from a portion of their estate, and would constitute a complete eviction of the owner as such. If there was such an ouster proved as to the whole by a multiplicity of acts bearing on the several parts of the estate, but all referrible to the same principle or purpose, then the plaintiff had a cause of action in the nature of ejectment so soon as he was disturbed in his possession by any of these acts, in their legal nature such as to contradict and annihilate his right throughout the estate, even though their immediate physical incidence was on but particular parts of it—a cause of action extending, as to its physical object, to the whole property, because his power over the whole was invaded and overthrown. Regarding the plaintiff's right, therefore, to land, to timber, to kumri cultivation, and to reclamation and disposal at his own mere will, as parts, so far as the right was concerned, of a single legal unit, the cause of action had arisen more than twelve years before the institution of the suit. The plaintiff's right, so far as it rested on the sanads, was not supported, but contradicted by the active enjoyment assumed, on behalf of the Government thirty years almost before the institution of the suit, of an important part of the advantages conferred by the grants, and on an assertion of rights which, if the grants were to be construed as the plaintiff desired, called for immediate action in the Court on his part. The claim was also contradicted by a series of transactions in which the Government officers disposed, from time to time, of portions of land included within the confines of the estate which the plaintiff claimed. His claim, therefore, on the sanads was untenable. Setting aside the sanads, then, the mere payment of kumri tax, however it may have indicated that some land was beneficially occupied by the vargdar, afforded by itself no certain evidence either of the place of that occupation or of its nature as temporary or permanent, as held on proprietary right, or as merely casual and precarious. It is the possibility of referring the exaction levied to some particular area, shown to have been actually and exclusively held by the taxpayer, either by extrinsic evidence, or by that of the Government accounts themselves, that makes the payment and receipt of a tax a practical assertion and admission of private ownership of the space thus rendered distinguishable. But private owner-

LAND TENURE IN KANARA—continued.

ship being established, it still remains true that a property in the soil must not be understood to convey the same rights in India as in England. It may be subject to restrictions and qualifications varying according to the peculiar laws of each country; and those acts which under one system would be necessarily regarded as contradictions of any ownership over the object on which they were exercised except that from which they spring may, under another system, be quite compatible with an ownership subsisting unimpaired side by side with the limited right to which they would be attributed. The reserve of timber generally, as of particular kinds of timber, may be referred to as an instance of this divided dominion. What the Government intend and practically intimated through its officers, constituted the bounds which it set to the plaintiff's acquisition through its acquiescence, both as to the extent of the rights to be exercised and the local limits within which they were to be exercised. As to the former point, whether the plaintiff's predecessors gained a general ownership of the soil or not, they either did not gain an ownership of the timber or were wholly ousted from the exercise of that ownership from 1842 downwards. As to the latter point, the evidence showed that the plaintiff's family as vargdars exercised rights over forest tracts in all the estates to which the present claim extended, though as to some of these tracts these rights could not be referred to any particular space. But, even though there had been no interference on the part of the Revenue officers with the plaintiff's free use of the forest, that free use without an exclusive appropriation would not in itself constitute an exclusive right against the State. The right arising from the State's eminent domain is not extinguished by its mere non-exercise, and its exercise was not called for until some public injury or inconvenience arose. The exercise of the plaintiff's dominion had been prevented, except within such limits as the executive officers prescribed, at any rate from 1842; while the ownership of the Government over the forest trees and its proprietary right in the soil had been during the same time at least uniformly asserted, and the plaintiff's suit was therefore barred by limitation. **BHASKARAPPA v. COLLECTOR OF NORTH KANARA . . . I. L. R., 3 Bom., 452**

3. ————— *Mula-vargdars, Power of, to raise rent of mul-gainidar—Enhancement of assessment by Government—Power of State.*—The plaintiff, who was a mula-vargdar (superior holder) of certain land situated in a village in the district of Kanara, sued to recover from the defendant, his mul-gainidar (permanent tenant), the enhanced assessment levied on the land by Government, and the local cess. Plaintiff also claimed rent for one year. The plaintiff alleged that the assessment had been enhanced, because of the defendant's encroachment on the adjoining land. The defendant denied his liability for the enhanced assessment, as he was a mul-gainidar, and only liable to pay the fixed annual rent reserved in the lease. He also denied having made any encroachment, and contended that the land, alleged to have been acquired

LAND TENURE IN KANARA—continued

property claimed, was an admission that at the date of those sanads the then Government had the power

assessment in the plaintiff's vargs and its payment for a long series of years did not show or manifest any estate or permanent right at all in the forests as such as being vested in the plaintiff's vargs.

having had may have ceased to have any right to collect korlaya (tax on bill hooks) direct from the cutters so long as kumri cultivation at all is or was carried on, yet it has a right to stop the cultivation altogether (remitting the kumri assessment entered in the vargs) in all the forests of North Kanara including those in question in the present case not shown to be private property, on some other ground than the mere entry of kumri assessment in a particular varg or number of vargs. The plaintiff's suit therefore, which was to recover possession of particular tracts of forest on the ground of ownership shown or evidenced only (apart from the question of the sanads) by such entry in his vargs of kumri

the plaintiff's suit

the Government ought to have asserted it by a

LAND TENURE IN KANARA—continued

missed. That was the case he put forward to the

lands belong to the State. The mere fact that a varg-

confirmed in them must be admitted as the

plementary to it, that the farther rule is accepted, that the possession and the ownership springing from possession of a farm or varg as a whole, and within the limits as to which certainty is attainable, are not pre-

ship, or a grant from him, do not suffice to create an ownership against him, and the mere non interfer-

authority or else fortified by an equivalent law of prescription. Under these conditions a true ownership event of the forests might arise but the mere payment of the kumri assessment would not create it in the case of a vargdar. Upon the evidence held that the sanads were not proved, nor had the plaintiff established any exclusive possession of, or proprietary right in, any part of the forest claimed, while the evidence showed a continued and consistent

LANDLORD AND TENANT—continued.

Col.

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[8 B. L. R., Ap., 51]

10 B. L. R., Ap., 5

I. L. R., 9 Calc., 609

I. L. R., 14 All., 362

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See CASES UNDER ESTOPPEL—LANDLORD AND TENANT—DENIAL OF TITLE.

See CASES UNDER KABULIAT.

See CASES UNDER LEASE, CONSTRUCTION OF.

See LIMITATION—QUESTION OF LIMITATION 7 W. R., 395

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6 B. L. R., Ap., 130

7 B. L. R., Ap., 17

12 B. L. R., 274, 282 note, 283 note

I. L. R., 7 Bom., 96

See LIMITATION ACT, 1877, s. 18.

[I. L. R., 12 Bom., 501]

See CASES UNDER LIMITATION ACT, 1877, ART. 139.

See CASES UNDER MADRAS RENT RECOVERY ACT (VIII OF 1865).

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See PARTIES—PARTIES TO SUITS—LANDLORD AND TENANT.

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See TRESPASS—GENERAL CASES.

[23 W. R., Cr., 40]

I. L. R., 2 Mad., 232

1. CONTRACT OF TENANCY, LAW GOVERNING.

1. ——— Rules applicable to relation of landlord and tenant.—The rules applicable to the relation of landlord and tenant in England are applicable to India, whenever no precise rule regarding the subject is to be found in Hindu or other laws. *TARACHAND BISWAS v. RAM GOBIND CHOWDHRY* I. L. R., 4 Calc., 781

2. ——— Contracts of tenancy between Hindus in Calcutta—*Stat. 21 Geo. III, c. 70, s. 17*.—A tenancy created by express contract between Hindus in Calcutta is within the words "matters of contract and dealing between party and party" in *21 Geo. III, c. 70, s. 17*, and the right of the parties and the incidents of the tenancy must be governed by Hindu law. *RUSSIOKLOM MUDDUCK v. LOKENATH KURMOKAR*

[I. L. R., 5 Calc., 688; 5 C. L. R., 492]

2. CONSTITUTION OF RELATION.

(a) GENERALLY.

3. ——— Contract to pay rent—*Omission to obtain kabuliati*.—Where two parties bind themselves under an indenture drawn up in the English form, the one to lease and the other to pay rent for certain land, the contract is complete, and a suit for arrears of rent due under it will lie under Act X of 1859, although no separate kabuliati is executed. *KISHEN DOSS v. HURRY JEEBUN DOSS*

[10 W. R., 324]

4. ——— Implied relationship of landlord and tenant—*Absence of express condition*.—Where A avowedly holds and cultivates B's land, A is, by the universal custom of this country, B's tenant (even without express permission to cultivate on B's part, or express condition to pay rent on A's part), and while so holding and cultivating is bound to pay B a fair rent and to give him a kabuliati. *NIRYANUND GHOSE v. KISSEN KISHORE*

[W. R., 1864, Act X, 82]

5. ——— Grant of pottah by zamindar to sub-tenant—*Non-assignment of rights to intermediate tenant*—*Suit for kabuliati*.—The defendant was under-tenant in respect of lands which his lessor held under a modafut from the zamindar.

LAND TENURE IN KANARA—concluded

by encroachment, had been included in the lease. Both the lower Courts allowed the plaintiff's claim with respect to the enhanced assessment and local cess, together with rent for one year. On an issue being sent to the District Judge by the High Court on second appeal, it was found that defendant was in possession of land other than that which he held under the lease, that he had acquired this other land by encroachment subsequently to the date of the lease, that both the lands were entered in the

acquired by defendant was assessed at the time that the plaintiff could not recover from the defendant.

tracts originally made between the mula-vargdars (superior holders) and their mul gamdars (permanent tenants), to relieve the former from the hardship caused to them by reason of the enhancement, by Government, of the assessment on their lands to an amount exceeding or equal to the rent received by them (mula vargdars) from the mul-gamdars. It is doubtful whether Government in its executive capacity, has any more power than Courts of law to interfere with contracts made between private persons. The remedy lies rather in the hands of the Legislature. *KANOA v. BUNA HEGDE* . . . I. L. R., 4 Bom., 473

See also *BABSHETTI v. VENKATARAMANA*

[I. L. R., 3 Bom., 154]

and *RAM KRISHNA KIVE v. NARSHIVA SHANBOG*

[I. L. R., 4 Bom., 478 note]

See *RAM TUKOJI v. GOPAL DHONDJI*

[I. L. R., 17 Bom., 54]

LAND TENURE IN ORISSA.

Maurasi sarvarakari tenure, The mode of succession to—*Consent of the zamindar to the transfer of tenure*—The tenure known in Orissa as *maurasi sarvarakari*, although recorded in the name of a single member, is descendible to all the heirs as joint heritable property, and cannot be transferred without the consent of the zamindar. *BHUBAN PARI v. SHAMAYAN DEY* [I. L. R., 11 Calc., 899]

LAND TENURE IN SURAT

Village of *Kabilpur*—*Maxim*
"Nullum tempus occurrit regi"—The enactments

LAND TENURE IN SURAT—concluded.

Government, and as such falls in respect of the

exempt from payment of land revenue, under a tenure recognized by the custom of the country for more than thirty years, and therefore falls within the claims for exemption mentioned in Bombay Act VII of 1863, s. 21. *GOVERNMENT OF BOMBAY v. HARIHAR MOVBHAI* . 12 Bom., Ap., 225

LANDLORD AND TENANT.

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LANDLORD AND TENANT—continued.**2. CONSTITUTION OF RELATION—continued.**

determination—Order of Settlement officer under N.-W. P. Land Revenue Act (XIX of 1873), s. 77, determining rent.—An order of a Settlement officer under s. 77 of Act XIX of 1873 determining rent is a purely prospective order and will not entitle the landlord to sue his tenant for rent at the rate fixed thereby for any period antecedent to the 1st of July next following the date of such order. *Mahadeo Prasad v. Mathura, I. L. R., 8 All., 189*, distinguished. *DEBI SINGH v. JHANO KUAR*

[I. L. R., 16 All., 209]

14. ——— Position of occupiers in village granted to inamdar—Suti tenure.—An inamdar to whom a village has been granted by Government, though bound to respect all existing tenant-rights, is under no obligation to grant unoccupied lands in "suti" or other permanent tenure, or to re-grant on the same tenure lapsed suti lands; nor does the mere taking up of lands in such a village constitute the occupiers suti tenants. *NASABVANJI HORMASJI v. NARAYAN TRIMBAK PATIL*

[4 Bom., A. C., 125]

15. ——— Relationship depending on validity of adoption—Status pending appeal to Privy Council.—In a suit for rent the plaintiff sued as the adopted son of the deceased landlord, and the defendant (who was the adopted son of the deceased tenant and in possession) denied the relationship of landlord and tenant between them. It appeared that the defendant disputed the validity of the plaintiff's adoption and had brought a suit to set it aside in which he had failed, but had appealed to the Privy Council; that the plaintiff had not received rent for many years, and had brought a suit to eject the defendant and recover mesne profits which was dismissed, it being found that the defendant was entitled to retain possession. *Held* that, so long as the decision that the plaintiff was the adopted son of the deceased landlord held good, the relationship of landlord and tenant existed between the parties, and the plaintiff was therefore entitled to recover rent from the defendant. *HIRONATH ROY CHOWDHRY v. GOLUCKNATH CHOWDHRY*

19 W. R., 18

16. ——— Assignment by tenant of goodwill, stock-in-trade, fixtures, furniture, and chattels—Notice by landlord to lessee and to assignee to deliver up possession on expiration of lease or to pay rent—Holding over—Use and occupation—Liability of assignee for compensation for use and occupation.—*L* assigned to *D* the stock-in-trade, goodwill, fixtures, chattels, and premises in connection with a certain business carried on by him at the said premises which he held on lease from the plaintiff. The deed of assignment contained (*inter alia*) a provision empowering the assignee, in the event of any breach by *L* of the covenants contained in the said deed, to let the premises for any term or terms of years for such rent and under such covenants and conditions as *D* might think fit; and there was a further provision that *L* should not remove any of the stock-in-trade, chattels, etc., without the permission of *D*. Shortly before the

LANDLORD AND TENANT—continued.**2. CONSTITUTION OF RELATION—continued.**

expiration of the lease, the plaintiff served a notice on *L* to deliver up possession of the premises on the expiry of the lease or to pay an enhanced rent therefor, and a notice on *D* requiring *D* to deliver up possession and stating that in default he would hold *D* jointly liable with *L* for the enhanced rent. *D* had durwans and a clerk on the premises to see that nothing was removed therefrom without his permission. *L* and *D* continued to keep the stock-in-trade on the premises after the determination of the lease, and the business was carried on as before. The plaintiff subsequently brought an action against *D* and *L* for compensation for use and occupation of the premises for four months. *Held* (reversing the decision of AMEEB ALI, J.) that the lease did not pass under the terms of the assignment to *D*, and that *D* was not liable to the plaintiff for compensation for the use and occupation of the premises. *MADHUBMONEY DASSEE v. NUNDO LALL GUPTA*

[I. L. R., 26 Calc., 338]

(b) ACKNOWLEDGMENT OF TENANCY BY RECEIPT OF RENT.

17. ——— Right to recover rent, Establishment of—Assessment—Agreement to pay rent.—To establish a right to recover rent, a zamindar must show that either by assessment in due course of law or by agreement the tenant is liable to pay it. *GAYASOODEEN v. KHUDA BUKSH*

[1 N. W., 87: Ed. 1873, 139]

KRISHNA GHOSE v. RAM NARAIN MOHAPATTUR
[25 W. R., 214]

18. ——— Right to recover rent—Sharer in undivided talukh—Agreement to pay rent.—A sharer of an undivided talukh may be entitled to recover his share of the rent due from the talukh generally, but it does not follow that he is entitled to recover from the jotedar of a particular jote in the talukh unless there is an agreement to that effect. *SHAMA SOONDURER DEBIA v. KRISTO CHUNDER ROY*

[13 W. R., 316]

19. ——— Purchase of land—Contract, express or implied, for payment of rent.—*Held* that the plaintiff, not having been put into the possession of land purchased by him, and holding on contract, express or implied, from the holder of the land for payment of rent, was not competent to sue the defendant (occupant of the land) for rent thereof. *RAM DASS SINGH v. RAM NARAIN*

[2 Agra, Rev., 9]

20. ——— Liability to pay rent—Occupation after deprivation under decree.—A party stripped by a decree or order of proprietary interest in land does not by mere subsequent occupation of it become vested with the character of a tenant, and therefore he is not liable to distraint for rent. He must have become a tenant by agreement or act of law to render him liable for rent. *MUKURDHOOR SINGH v. RAM CHURN*

[1 N. W., 14: Ed. 1873, 12]

LANDLORD AND TENANT—continued**2 CONSTITUTION OF RELATION—continued**

Subsequently the lessor left, and the zamindar gave to the defendant a pottah for part of the lands covered by the modafut, and to the plaintiff a pottah for the

and tenant so as to enable the plaintiff to maintain his suit **KALAM SHEIKH v. PANCHU MANDAL**
[2 B L R, A. O, 252]

S C KALLAM SHEIKH v. PANCHOO MUNDUL
[11 W. R, 128]

6 ——— Grant retaining portion of land rent free, but subject to house-tax—Holders under sanad under Bom Act VII of

7 ——— Instrument not fixing permanent rent Where a written instrument purported to create the relation of landlord and tenant for five years, the lessor's tenure being that of a *mirasidar* i.e., a hereditary tenancy under Govern-

[4 Mad., 153]

CHUNDER ROY v. JUGGERNAUTH LOY CHOWDHRY
[Marsh, 146 W R, F B, 47
1 Hay, 348]

9 ——— Decree for kabuliati—Evidence of relationship of landlord and tenant—A decree

LANDLORD AND TENANT—continued**2 CONSTITUTION OF RELATION—continued**

which directs that a kabuliati shall be given by the defendant at a certain rent amounts to an adjudication that there is between the parties the relation of landlord and tenant, and is important evidence on that point in any subsequent suit against the same defendant **SHURUF JAN v. KUTTEH ALI**

[23 W. R, 389]

10. ——— Assessment after resumption—Position of lakhrajdar after resumption—

BUNY BURHAL v. JOYKISHEN MOOKERJEE
[8 W R, 92]

BRONJONATH DUTT v. JOYKISHEN MOOKERJEE
[4 W. R., 69]

BHOOPAL CHUNDER BISWAS v. MAHOMED MOLLAH
[8 W R, 286]

11. ——— Decree declaring right to assessment Resumption of invalid lakhiraj—Beng Reg II of 1819, s 80—Beng Reg XII of 1793 s 10—Decree of Civil Court—A decree of a Civil Court in a suit (the plaint of which referred to s 30 of Regulation II of 1814 and s 10 of Regulation XII of 1793) which declared the right of the zamindar to assess rent on land not proved to have been held under a grant prior to 1st December 1790, was sufficient to establish the relationship of landlord and tenant between the zamindar and the party against whom the right of assessment was declared. **SAUDAMINI DEBI v. SARUP CHANDRA ROY
[8 B L R, Ap, 82 17 W. R, 363]**

SHAMASUNDARI DEBI v. SITAL KHAN
[8 B. L. R., Ap, 85 note 15 W. R, 474]

MADHUSUDAN SAGORT v. NIPAL KHAN
[8 B L R., Ap, 87 note: 15 W. R, 440]

ROHINI NANDAN GOSSAIN v. RATNESWAR KUNDU
[8 B L R., Ap, 89 note 15 W. R, 346]

12 ——— Decree for resumption—Resumption of invalid lakhiraj—Beng Reg II of

between the plaintiff and defendant so as to enable the plaintiff to sue for a kabuliati under cl 1, s 23 Act X of 1853 That relationship could not come into existence until the lakhrajdar had agreed to pay the revenue assessed by the Collector **MAHARAJ CHANDRA BHADURY v. MAHIMA CHANDRA MAZUMDAR**

[8 B L R, Ap, 83 note 12 W. R, 442]

13 ——— Suit for arrears of rent as so determined for a period prior to such

LANDLORD AND TENANT—continued.**2. CONSTITUTION OF RELATION—continued.**

mortgagee, and such mortgagee must establish his right to collect rent before he can sue to have the amount thereof ascertained. *ADJOODHVA SINGH v. GIRDHARJI* **2 N. W., 197**

31. *Purchaser of rent-paying tenancy.—Privilege with zamindar.*—There is sufficient privilege of estate between the purchaser of a rent-paying holding and the zamindar to entitle the latter to claim rent. *KOLOO MISH v. BURNO KULWAN* **2 N. W., 258**

32. *Liability of heir of deceased lessee for rent.—Mokurrari lease.—Kabuliat.*—The heir of a lessee is liable to the lessor for rent payable by virtue of a kabuliat, notwithstanding he is not in possession of the land. *TAKINER-DEESAD GHOSH v. SREEROPAL PAUL CHOWDHRY* [Marsh., 476: 2 Hay, 593]

33. *Registered owner, Suit by, where the relationship of landlord and tenant is not shown to exist.*—Beng. Act VII of 1876, s. 78.—The mere fact of a person being registered under the provisions of Bengal Act VII of 1876 as proprietor of the land in respect of which he seeks to recover rent is not sufficient to entitle him to sue for it. Where a landlord who was registered as owner of the land in respect of which he claimed rent sued the occupier for such rent, but was only able to prove the fact that he was the registered owner and was unable to show that the relationship of landlord and tenant existed, or that he had a good title to the estate of which he was the registered owner.—*Held* that the suit was rightly dismissed. *RAMKRISHNO DASS v. HARAIN*

[I. L. R., 9 Calc., 517: 12 C. L. R., 141]

34. *Presumption of relationship of landlord and tenant.*—Where a defendant in a suit for enhancement of rent admits that he has paid for many years and is still paying a sum of money to the holders of the *patni* in plaintiff's possession, without being able to show it was paid as anything but rent, there is sufficient to raise the presumption that the parties stand to each other in the relation of landlord and tenant. *BEHAREE LALL MOOKERJEE v. MOBHOO SOODUN CHOWDHRY* [8 W. R., 474]

35. *Beng. Regs. V of 1799, s. 5, and V of 1827, s. 3.—Sub-tenure taken charge of by Collector.*—Under the provisions of Regulation V of 1799, s. 3, and Regulation V of 1827, s. 3, the Collector took charge of a sub-tenure as administrator of a deceased person to whom the sub-tenure belonged. *Held* the Collector was in no sense the tenant of the superior landlord, and consequently no suit would lie against him under Act X of 1859 for rent alleged to be due in respect of the sub-tenure. *COLLECTOR OF BOGRAH v. DWARKANATH BISWAS*

[4 B. L. R., Ap., 80: 13 W. R., 194]

36. *Occupation by trespasser.*—Occupation by a trespasser does not create a claim to rent, though it may give grounds for an action for damages. *BICHOOKE PANDEY v. NARAIN DUTT* **1 N. W., 26: Ed. 1873, 24**

LANDLORD AND TENANT—continued.**2. CONSTITUTION OF RELATION—continued.**

37. *Right of persons in possession under decree against person with subsequent decree for possession.—Attornment, Absence of.*—Where A and B were in possession of lands by virtue of a decree of Court, their tenants could not be called upon to pay rent to C, to whom they had not attorned, but who subsequently obtained a decree for the lands in suit, so long as no decree of Court had declared the title of C to be superior to that of A and B. C's remedy in such case is an action against the persons who were wrongfully in possession for mesne profits, and not in a suit for rent against their tenants, who had in good faith dealt with the persons who were the ostensible proprietors in possession under a decree. Lands may be cultivated by a mere trespasser, and in that case the cultivator would not be liable to a suit for rent, but to a suit for mesne profits. Owners of land may take advances for the cultivation of indigo, and the persons by whom the advances were given may find it necessary to enter on the land and look after the cultivation and harvesting of the crop, but if they did so, they could not be sued as tenants for rent. To render a person liable to pay as a tenant, it must be proved that he has by an express or implied agreement promised to pay rent, or that he has been assessed with rent in due course of law. *MUNOHR DASS v. DEEN DIAL* **3 N. W., 179**

38. *Liability for rent from use and occupation without registration.*—Parties in possession make themselves tenants by use and occupation, and may be sued for rent, even though not registered by the zamindar. *LALUN MONEE v. SONA MONEE DABEE* **22 W. R., 334**

39. *Suit for rent.—Tenant settled on the land by a trespasser, Position of.—Bengal Tenancy Act, s. 157.*—A suit was brought by the plaintiffs against a tenant for the entire rent, making the co-sharer landlords also defendants to the suit. The defence of the tenant, defendant No. 1, was denial of relationship of landlord and tenant, and payment to the co-sharer landlords. The co-sharer landlords *inter alia* pleaded that, as the tenant-defendant was settled on the land by them at a time when they were claiming to be entitled exclusively to the possession thereof, under a title derived from their auction purchase, they must be taken to have been trespassers on the land so far as the plaintiff's share was concerned, and that consequently defendant No. 1, who was settled on the land by them, must also be treated as a trespasser as against the plaintiffs. *Held* that the defendant No. 1 could not be treated as a trespasser as against the plaintiffs, and that the plaintiffs were entitled to claim rent for use and occupation from the defendant No. 1. *Nityanund Ghose v. Kissen Kishore, W. R. (1864), Act X, 82; Lalun Monnee v. Sonamonee Dabee, 22 W. R., 334; Lukhee Kanto Doss Chowdhry v. Sumeeruddin Lusker, 13 B. L. R., 243: 21 W. R., 208; Surinmoyee v. Dino Nath Gir, I. L. R., 9 Calc., 908; Binad Lal Pakrasi v.*

LANDLORD AND TENANT—continued**2 CONSTITUTION OF RELATION—continued**

21. ——— Implied contract to pay rent.—Under certain circumstances, a contract to pay rent to the zamindar on the part of the tenant

PERSHAD ROY CHOWDHRY 7 W. R., 128

22. ——— Transferee of landlord—*Attornment, Necessity of*—In a suit for rent where the defendant held under a lease from a party who subsequently gave a lease to plaintiff which gave him the right to collect rents from the defendant in

Rent Act SEEN CHAND v BUDHOO SINGH
[13 W. R., 301]

23. ——— Ex-proprietary tenant—*Suit for arrears of rent—Determination of rent—Act XII of 1881 (N.W.P. Rent Act), ss 14, 95*

§ 190 of Act XIX of 1873 PHULAHRA v JEOLAL SINGH I. L. R., 8 All., 52

24. ——— Suit for arrears of rent

LANDLORD AND TENANT—continued.**2 CONSTITUTION OF RELATION—continued**

dismissed. *Mahadeo Prasad v Mathura, I L. R., 8 All 189, distinguished. Phulakra v. Jeolal Singh, I L. R., 6 All., 52, referred to RADHA PRASAD SINGH v JUGAL DAS*

[I. L. R., 9 All, 165]

25. ——— Extinguishment of proprietary right by partition—*Contract for payment of rent*—Where a partition was made and the proprietary right of one of the co-sharers in a portion which fell to another was consequently extinguished and he became a mere tenant,—*Held* that, though the rent was exigible, the claim for arrears of rent could not be decreed in the absence of express or implied contract for the same ZALIM RAI v DOORAGA RAI

[1 Agra, Rev., 89]

26. ——— Claim to rent—*Arrears of rent—Failure to prove liability to pay rent—A*

See GUMANI KAZI v HURRYNUR MOOKERJEE
[B. L. R., Sup Vol., 16]

Or proves a contract to pay rent LUGHMEERPUT DOOR v ENAET ALI 23 W. R., 346

27. ——— *Assessment and determination of rate of rent—Rent free lands—A suit for arrears of rent cannot be maintained in respect to rent free land until the land has been assessed and the rate of rent determined. NOOR ALI v IMTEAZOODEEN KHAN* 3 Agra, Rev., 2

28. ——— *Suit for arrears of rent—Non payment of rent for long period—*

the annual papers contain entries, is not sufficient to justify a decree for arrears of rent. CHHOTMALA v CHITOWLA 2 Agra, 137

29. ——— *Decree for kabuliat—Suit for arrears of rent—Where a party, after obtaining a decree establishing his title to land, sue for and gets a decree for a kabuliat against another who was holding the land adversely to him without any contract, express or implied, for the payment of rent, he cannot maintain a suit for arrears of rent for a period previous to the kabuliat which cannot have retrospective effect. JAFAR v. NUREN DAS BAY*

[8 W. R., 555]

30. ——— *Where a party, after obtaining a decree establishing his title to land, sue for and gets a decree for a kabuliat against another who was holding the land adversely to him without any contract, express or implied, for the payment of rent, he cannot maintain a suit for arrears of rent for a period previous to the kabuliat which cannot have retrospective effect. JAFAR v. NUREN DAS BAY*

LANDLORD AND TENANT—continued.**3. OBLIGATION OF LANDLORD TO GIVE AND MAINTAIN TENANT IN POSSESSION—concluded.**

for rent after dispossession.—Where a lease was granted by a Deputy Collector without authority, and his act set aside by the Collector, the tenant, who was turned out of possession without any beneficial occupation for the short period of his lease, was held not to be liable for rent. **KALEE DOSS BANERJEE v. NUBEEN CHUNDER CHATTERJEE**

[24 W. R., 91]

71. ——— Dispossession by stranger—Liability for rent.—A tenant dispossessed by any person not claiming under the landlord is still liable for the rent; his remedy is against the wrong-doer for damages. **GALE v. CHEDI JHA** . 2 Hay, 591

72. ——— Failure of lessor to protect possession of lessee—Liability for rent—Dispossession.—If a lessor fails by remissness to do that which he alone can do to protect his lessee in possession, even independently of any protective provision in the lease, he cannot claim rent from the lessee in respect of the portion of the property from which the latter has been evicted. **WAJED ALI v. CHUNDRABUTTY KOOREE** . 22 W. R., 542

73. ——— Disturbance by landlord of peaceable possession—Suspension and apportionment of rent.—Where the act of a landlord is not a mere trespass, but something of a graver character, interfering substantially with the enjoyment, by the tenant, of the demised property, the tenant is entitled to a suspension of rent during such interference, even though there may not be actual eviction. If such interference be committed in respect of even of a portion of the property, there should be no apportionment of rent where the whole rent is equally chargeable upon every part of the land demised. But if the interference is in respect of only a certain portion of the demised property, the rent for which is separately assessed, there should be apportionment. **DRUNPUT SINGH v. MAHOMED KAZIM ISPAHAIN**

[I. L. R., 24 Cal., 296]

74. ——— Failure to keep tenant in entire possession—Surrender by tenant on being partly dispossessed—Liability for rent.—Where a plaintiff brought a suit to recover the rents of some lands which he had leased out to defendant, but defendant pleaded that he had relinquished the lands because, in a suit brought against him by a third party, who claimed a portion of the lands, a decree had given the said party possession of the portion claimed by him; and the question arose whether defendant was justified in relinquishing the lands, seeing that this decree had been reversed on appeal, and that defendant, if he had waited, would have been put in possession of all the land covered by his lease. —Held that defendant was right in submitting to the decree of a Court of competent jurisdiction; that he could not be expected to content himself with the residue of the land left untouched by the decree, or to wait for a decree which might restore the portion taken away from him; and that, having given up his lease to the plaintiff, he was not liable for any rents. **LALI KOWAR v. CARTER** . 25 W. R., 492

LANDLORD AND TENANT—continued.**4. OBLIGATION OF TENANT TO KEEP HOLDING DISTINCT.**

75. ——— Confusion of boundaries—Person holding land on lease and land of his own.—A tenant is bound to keep distinct from his own land during the tenancy, and to leave clearly distinct at the end of it, the land of his landlord. Where, owing to the negligence of the tenant, the land demised becomes confounded with his own, the tenant, unless he can ascertain the former, is bound to deliver to the landlord a portion of the lands of which the boundaries have been confounded equal in value to the land demised. **DUGAPPA CHETTI v. VIDHIA PURNA THASANI** . I. L. R., 6 Mad., 263

DOORGA KANT MOZOOMDAR v. BISHESHUR DUTT CHOWDHRY . W. R., 1864, Act X, 44

76. ——— Interference of Civil Court to fix them.—In equity, if through the default of a tenant or a copy-holder, who is under an implied obligation to preserve the boundaries of separate estates which he holds, there arises a confusion of boundaries, the Court will interfere as against such tenant or copy-holder to ascertain and fix them. In a case in which the boundaries of three talukhs had been found to be unascertainable, it was decreed that they should be defined and fixed in such a manner that the produce of the total land in each talukh should bear the same proportion to the jama payable by such talukh as the produce of the whole of the said lands bore to the total of the jamas payable on account of the three talukhs. **KHEMAMOYEE alias KHEMESSUREE DEBIA v. SHOSHEE BHOOSUN GANGOOLY** . 9 W. R., 95

77. ——— Obliteration of boundary-marks by cultivation—Effect of, on claim to rent.—A claim to rent for certain land must not be dismissed merely because the defendant, by planting indigo, has obliterated the boundary-mark of that land. It must be ascertained who, by previous enjoyment, is entitled to receive the rents of the land, if the plaintiff is not so entitled. **BROJONATH ROY v. GILMORE** . 2 W. R., Act X, 48

78. ——— Tenant allowing encroachment on tenure—Obligation of lessee to avoid dispossession or encroachment on lessor's property.—It is a general principle of law that it is incumbent upon every lessee to protect his lessor's property from encroachment or unlawful eviction, and that, if he fails to do so, he exposes himself to an action for damages by his landlord. **PROSUNNO MOXI DAS v. KALI DAS ROY** . 9 C. L. R., 347

5. LIABILITY FOR RENT.

79. ——— Proof of liability—Production and proof of kabuliati.—The production of a kabuliati and proof of its execution by the tenant is sufficient to charge him with rent without the production of the pottah. **MAHOMED HYDER HOOSSEIN v. JEEAWUN** . 1 N. W., Ed. 1873, 43

80. ——— Non-completion of contract—Mad. Regs. XXX of 1802, s. 6, and V of 1822,

LANDLORD AND TENANT—continued.**5. LIABILITY FOR RENT—continued.**

Held, disallowing the defendant's contention as to exemption from payment of the rent, that the agreement by the mortgagor to be responsible for the revenue came to an end with the extinction of the equity of redemption by the Court-sale. **HALL KRISHNA MURTHY v. VISHWANATH KESHAV JOI** [I. L. R., 10 Bom., 523]

105. ——— Suit for arrears of rent—

Disposition by landlord—Limitation—Cause of action—Measure profits, Refund of.—*H.* having been dispossessed by the landlord from a ryotwari holding purchased by him, brought an action and obtained a decree for possession and measure profits. *H.* obtained delivery of possession in execution of decree in 1891, and in 1892 measure profits for the years 1295 (1887-88) to the Bhadai season of 1299 (1891-92) were awarded to him. At the time of the assessment of measure profits, the landlord claimed to set off the rent against such year's profits, but they were referred to a private suit, and a set-off was not allowed. The present suit for refund of profits or rent for the period aforesaid was brought in August 1892, and one of the objections raised was that the claim to the rents of 1295 and 1296 was barred by limitation. The plaintiff alleged that the cause of action accrued upon the date of assessment of profits and the rejection of the claim to a set-off in 1892, and it was urged that at all events it did not accrue before delivery of possession in 1891. *Held* that the objection was valid and the claim to the rents in question was barred by limitation. **SWARNASINGI v. SHANTI MUKTI BARMANI**, 2 B. L. R., F. C., 69; 11 W. R., P. C., 5; 12 Moore's I. A., 244, and **Din Dayal Paramanik v. Radha Kishor**, Delhi, 8 B. L. R., 635; 17 W. R., 415, distinguished. **Kudrathine Dossia v. Kishinath Bhasas**, 13 W. R., 338, followed. **Eshan Chunder Roy v. K'ajab Annaclich**, 16 W. R., 79, and **Huro Pershad Roy Chowdhry v. Gopal Das Dutt**, I. R., 9 I. A., 82; I. L. R., 9 Calc., 255, referred to. **MAHOMED MAJID v. MAHOMED ASHAN** [I. L. R., 23 Calc., 205]

106. ——— Liability of representatives—Suit to recover arrears of rent from representatives of tenant at fixed rates.—*Held* that the legal representatives of a deceased tenant at fixed rates, who had died leaving the rent payable by him in arrears, were liable for payment of the arrears to the extent of the assets of the tenant which had come into their hands, and that this liability was not affected by the question whether or not they took over the tenancy of the deceased themselves. **Lekhraj Singh v. Rai Singh**, I. L. R., 14 All., 381, referred to. **MAHARAJA OF BENARES v. DALJIT SINGH** I. L. R., 19 All., 352

107. ——— Suit for rent by unregistered proprietor—Beng. Act VII of 1876, s. 78—Application for registration as proprietor.—S. 78 of the Land Registration Act, 1876, precludes a person claiming as proprietor from suing a tenant for rent until his name has been actually registered as such under the Act. A mere application to be

LANDLORD AND TENANT—continued.**6. LIABILITY FOR RENT—concluded.**

registered is not sufficient for the purpose. **SITTA KANT ACHARYA BAHADUR v. HEMANT KUMARI DEVI** [I. L. R., 16 Calc., 708]

DHOKONIDHUR SEN v. WASIDUNNISA KHATOON [I. L. R., 16 Calc., 708 note]

6. RENT IN KIND.

108. ——— Suit for share of rent or money-equivalent—Valuation of crop.—A landlord sued his tenant, paying rent in kind, for the share of the crop due to him, or rent, or for its money-equivalent. *Held* that the price at which the landlord was entitled to have the crop valued were those which prevailed at the time the crop was cut, and when it should have been made over to him. **LACHMAN PRANAD v. HOLAS MANTOON**

[2 B. L. R., Ap., 27; 11 W. R., 151]

109. ——— Rent in kind, Demand for—Landlord and tenant.—Acquiescence in a mode of payment different from that agreed on cannot alter the original contract. A landlord may demand payment of rent in kind in accordance with the original contract, although the tenant has paid rent in money for some years. **SOROBET ALI v. ANNOOL ALI** [3 C. W. N., 151]

7. TENANCY FOR IMMORAL PURPOSE.

110. ——— Lodgings let to prostitute—Suit for rent of.—A landlord cannot recover the rent of lodgings knowingly let to a prostitute who carries on her vocation there. **GAURINATH MOOKERJEE v. MADHUMANI PESHKAR** 9 B. L. R., Ap., 37

S. C. GOURREENATH MOOKERJEE v. MODHOOMONER PESHKAR 18 W. R., 445

8. PAYMENT OF RENT.**(a) GENERALLY.**

111. ——— Payment to co-lessors after distress—Claim for rent—8 Anne, c. 14—Distress—Co-landlords.—Two daughters, as co-partners, were owners of certain property, each having an eight annas share therein. On June 30th, 1868, they executed a lease of the property, in which it was provided that a monthly rent should be paid in separate payments to each of the two owners respectively, they giving separate receipts for the same. The tenant having failed to pay rent, one of the owners brought a suit for her share in her own name only, and obtained a decree. In execution of this decree, she seized and sold property belonging to the tenant. The sale took place on the 12th of February 1869. On the 15th of February the other owner brought an interpleader suit, the tenant having likewise failed to pay rent to her. She claimed to have what was due to her paid out of the proceeds realized by the sale under the decree. *Held* that she was not entitled to have it so paid. *Held* also *per* PEACOCK, C.J.—The Stat. 8 Anne, c. 14, does not apply to this

LANDLORD AND TENANT—continued**5 LIABILITY FOR RENT—continued.**

land the lessor bought the land and the lessor was liable for the rent. *I. L. R., 14 All, 54*

99 ——— Occupancy-riyat dying intestate—*Liability of the heirs of a deceased occupancy riyat to pay rent—Surrender of holding—Bengal Tenancy Act (III of 1885), ss 5, 26, and 86—The heirs of an occupancy-riyat,*

I. L. R., 10 Cal, 780

100. ——— Occupancy-tenant—*Liability of holder of right of occupancy for arrears of rent which accrued in lifetime of his predecessor—An occupancy tenant in possession who has accepted the occupancy holding is liable to be sued for arrears of rent, not barred by limitation which accrued in the lifetime of the person from whom the right of occupancy has devolved on him. LAKHNAJ SINGH v. RAJ SINGH. I. L. R., 14 All, 381*

101 ——— Lease to one partner on behalf of himself and his co-partners—*Suit for rent—Making co-partners parties—Use and occupation—When one partner A takes a lease of premises in his own name, though on behalf of the partnership, and with the assent of his partners B and C, B and C are not liable to be sued by the lessor for the rent reserved by the lease. A lease is*

any and does not consider that other person as the lessee, since there is no demise or conveyance to him. The covenant to

liable to be sued by the lessor as for use and occupation of the premises occupied by them. Having demise the property to A the lessor had no power to suffer or permit any one to occupy the premises during the continuance of the lease, and therefore the foundation of a claim for use and occupation was necessarily wanting. RAGGONATHAN GOPEL DAS v. MOHARRI JUTHA. I. L. R., 10 Bom, 568

102 ——— Lease—Assignment by

LANDLORD AND TENANT—continued.**5 LIABILITY FOR RENT—continued**

No written assignment was ever executed, but the Official Liquidator handed over the lease to the purchaser, who entered into possession. In a suit

as assignee as for the circumstances basis for the amount to be decreed GAYA PRASAD v. BALI NATH. I. L. R., 14 All, 176

103 ——— Liability of agent for rent—*Honorary secretary to a school maintained by a foreign society—The plaintiff sued the defendant to recover possession of a certain house in Bombay and for arrears of rent. The defendant*

was held that he was not liable to be sued personally. Held that the defendant was liable for the rent. There was nothing to show that the contract for the house was made on the personal credit of any one except the defendant. BHOSADHAI AILASHAKHA v. HATEM SAMUEL. I. L. R., 22 Bom, 754

104. ——— Liability of purchaser of khasgi (private or personal) land of a khotsi sharer—*Mortgage of the khotsi takshim (share)—Sale in execution of a decree on the mortgage—Partition among the khotsi sharers—Interest acquired by the purchaser at the execution sale—Agreement by the mortgagor to be responsible for the revenue—Agreement coming to an end with the extinction of the equity of redemption—Prima facie all land not shown to be alienated is liable to assessment, and the mere fact that no revenue was paid by a khotsi co-sharer in respect of khasgi (private or personal) land*

plaintiff and undertook to pay the Government dues on it. Plaintiff got a decree on his mortgage, and in execution the land was sold and purchased by defendant in the year 1878. In the year 1881, the khotsi sharers effected partition. In 1883 defendant took possession of the land. In 1884 and again in 1886, S having mortgaged his takshim (share) including the khasgi land to plaintiff the latter as mortgagee brought a suit to recover makta (fixed) rent in kind payable for the khasgi land purchased by the defendant. Held that as the partition between the khotsi sharers took place after the execution sale, only the occupancy of the land was sold to the defendant and that the plaintiff was entitled under the circumstances to recover a fair assessment

LANDLORD AND TENANT—continued.

8. PAYMENT OF RENT—continued.

seizure did not determine defendant's lease, and that he was still liable for any deficiency in the rent after the seizure's collections were credited. **FAKIRUDDIN MAHOMED ASHAN v. PHILLIPS**

[3 B. L. R., Ap., 53; 11 W. R., 464

OMRITSATH THWARER v. BHOOGOO SINGH

[W. R., 1864, 269

Centre, DALRAMPIE v. BRAJAN SAHA

[3 B. L. R., Ap., 54 note

JHOOMEKE CHOWDHURY v. ANDERSON

[6 W. R., Act X, 23

124.

— A *kabuliat*, after the usual stipulations, provided for the cancellation of the lease on the tenant failing to pay any of the instalments; and left it optional with the *zamin-dar* to appoint a *sezwal* to collect the rents. The tenant having defaulted in payment of rent, a *sezwal* was appointed. *Held* that the lease having been cancelled by the default, the appointment of a *sezwal* had reference only to the back rents to be collected. **RADHA PERSHAD SINGH v. BASHAWCK OORADHYA**

24 W. R., 116

125.

— *Effect of non-payment—Onus probandi—Suit for rent.*—When the relationship of landlord and tenant has once been proved to exist, the mere non-payment of rent, though for many years, is not sufficient to show that the relationship has ceased; and a tenant who is sued for rent and contends that such relationship has ceased is bound to prove that fact by some affirmative proof, and more especially is he so bound when he does not expressly deny that he still continues to hold the land in question in the suit. **RUNGO LALL MUNDUL v. ABDOL GUYPOOR** I. L. R., 4 Calc., 314; 3 C. L. R., 119

126.

— *Adverse possession.*—Mere non-payment of rent to the landlord does not render possession by tenants adverse to the landlord. **GANGADAI v. KALAPA DARI MAKRYA**

[I. L. R., 9 Bom., 419

127.

— *Onus probandi—Suit for rent—Adverse possession.*—Where the relation of landlord and tenant is proved to have existed, it lies on the defendant in possession of the land to prove that the relation was put an end to at such a period anterior to the suit as would entitle the defendant to rely on his possession as adverse to the plaintiff for twelve years. Non-payment of rent for upwards of twelve years and a grant of a *pottah* by Government to defendant for five years do not, when Government claims no interest adverse to plaintiff and plaintiff does not consent to defendant becoming tenant to Government, create any possession in defendant adverse to plaintiff. **Rungo Lall Mundul v. Abdol Guypoor**, I. L. R., 4 Calc., 314, approved. **TIRUCHURNA PERUMAL NADAN v. SANGUVIN**

[I. L. R., 3 Mad., 118

HARI VASUDEB v. MAHADAJI APPAJI

[5 Bom., A. C., 85

128.

— *Adverse possession.*—Non-payment of rent by tenant for more

LANDLORD AND TENANT—continued.

8. PAYMENT OF RENT—continued.

than twelve years does not constitute adverse possession. When possession may be referred to the contract of tenancy under which the tenant entered, mere length of enjoyment without payment of rent does not, under ordinary circumstances, affect the relation of parties. **DADODA v. KRISHNA**

[I. L. R., 7 Bom., 34

MAHOMED INALETULLA v. AKBER ALI

[2 Agra, 25

TROLYKHO TARINEE DOESIA v. MOHIMA CHUNDLER MUTTECK

7 W. R., 400

DAVIS v. ABDOL HAMED

8 W. R., 55

129.

— *Adverse possession.*—The plaintiff sued for possession of a piece of ground, alleging that he was the owner of it. The defendants denied the plaintiff's title and claimed ownership in themselves. The Subordinate Judge found that the plaintiff had originally held the property from the defendants, but that, as he had occupied it for more than twelve years without paying any rent or acknowledging the defendants as his landlords, he was entitled to be considered as owner by adverse possession. The District Judge, in appeal, upheld the decree of the first Court. On appeal to the High Court, *Held* that the District Judge was wrong in holding that mere non-payment of rent was sufficient to constitute adverse possession. **TATTIA v. SADASHIV**

I. L. R., 7 Bom., 40

130.

— *Non-payment of rent by occupancy raiyat—Title to land—Admission by tenant of liability to pay rent—Limitation.*—The non-payment of rent for a term of twelve years and more does not relieve an occupancy raiyat from the status of a tenant so as to give him a title to the land. Rent falls due at certain periods, and the failure to pay it becomes a recurring cause of action, and therefore, where the right to take rent is admitted by the raiyat, no question of limitation can arise. **PORSH NARAIN ROY v. KASSI CHUNDLER TALUKHDAR**

I. L. R., 4 Calc., 661

131.

— *Adverse possession—Determination of tenancy.*—The plaintiffs in this suit, alleging that S, through whom they claimed, had given B, who was represented by the defendants in July 1828, the lease of a certain house on the condition that B should pay a certain annual rent for such house, and if he failed to pay such rent that he should vacate the house, such conditions being contained in a *keeranama* executed by B in S's favour, sued the defendants for the rent of such house for two years, and for possession of the same, alleging the breach of such condition. *Held* (SPANKIE, J., dissenting) that, supposing that a tenancy had arisen in the manner alleged, the mere non-payment of rent by the defendants for twelve years prior to the institution of the suit would not suffice to establish that the tenancy had determined, and that the defendants had obtained a title by adverse possession, so as to defeat the claim; for if once the relation of landlord and tenant were established, it was for defendants to establish its determination by affirmative proof, over

LANDLORD AND TENANT—continued.

8. PAYMENT OF RENT—continued.

country. Held that it would not, at any rate, apply to a case in which a claimant seeks to enforce payment of her rent from a tenant who has not been evicted.

110. ——— Payment of rent by tenant.

TAFEE MOWLAH v. SUKRAWUT ALY

[Marsh, 102; W. R., F. B., 30:1 Hay, 340]

113. ——— Payment to a third person by landlord's directions—Plea of payment.—

114. ——— Payment by tenant of revenue to save estate from sale—Payment or set off in suit for rent.—Where a tenant is left in that

[15 W. R., 545]

115. ——— Presumption of payment of rent for former years—Suit for rent of current year—Beng. Reg. VII of 1799.—Under Rev.

CHOKER NABAIN SINGH. 2 W. R., 58

116. ——— Presumption of payment of rent—Payment of rent of subsequent year, Effect

... Act X, 66

SORUTH SOONDERY DABER v. BRODIE

[1 W. R., 274]

117. ——— Appropriation of payments—Arrears and current rent.—(None)

... W. R., 1864, Act X, 133

118. ——— Payment to one of joint lessors.—Payment to one of several joint proprietors

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8. PAYMENT OF RENT—continued.

is a payment to all. OODIT NARAIN SINGH v. HUNSON 2 W. R., Act X, 15

RAMVATH SINGH v. GONDER SINGH

[10 W. R., 441]

SAMSHU v. KAMOLRAO VITHALRAO

[I. L. R., 23 Bom., 794]

And payment by one of several joint lessees is payment by all. NILUKABHAR MASTOPHY v. DOORAA CHURN BISWAS 2 W. R., Act X, 94

119. ——— Discharge of

120. ——— Presumption of mode of payment—Where

121. ——— Obligation as to mode of payment—Installments—Where a patadar's rent is payable in monthly instalments.

shapes, he may be sued for an arrear of rent. RA-

... Act applies to the circumstances of this case. FAKIR LAL GOSWAMI v. BONNERJI

[4 C. W. N., 324]

(b) NON-PAYMENT.

122. ———

under-tenants Held that the appointment of such a

LANDLORD AND TENANT—*continued.*8. PAYMENT OF RENT—*continued.*

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[3 B. L. R., Ap., 53; 11 W. R., 464

OMRITNATH TRWAREE v. BUGGOO SINGH

[W. R., 1864, 269

Contra, **DALRYMPLE v. BRAJAN SAHA**

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24 W. R., 116

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[I. L. R., 3 Mad., 118

HARI VASUDEB v. MAHADAJI APPAJI

[5 Bom., A. C., 85

128. ————— *Adverse possession.*—Non-payment of rent by tenant for more

LANDLORD AND TENANT—*continued.*8. PAYMENT OF RENT—*continued.*

than twelve years does not constitute adverse possession. When possession may be referred to the contract of tenancy under which the tenant entered, mere length of enjoyment without payment of rent does not, under ordinary circumstances, affect the relation of parties. **DADOBA v. KRISHNA**

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I. L. R., 7 Bom., 40

130. ————— *Non-payment of rent by occupancy raiyat—Title to land—Admission by tenant of liability to pay rent—Limitation.*—The non-payment of rent for a term of twelve years and more does not relieve an occupancy raiyat from the status of a tenant so as to give him a title to the land. Rent falls due at certain periods, and the failure to pay it becomes a recurring cause of action, and therefore, where the right to take rent is admitted by the raiyat, no question of limitation can arise. **PORESH NARAIN ROY v. KASSI CHUNIB TALUKHDAR**

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LANDLORD AND TENANT—continued.**9. NATURE OF TENANCY—continued.**

J. L. R., 16 Cal., 223; L. R., 16 I. A., 6, distinguished. RENOO LALL LOHIA v. WILSON

[*I. L. R., 28 Cal., 204*
2 C. W. N., 718

138.

Perpetual tenancy—Long possession—Presumption arising from such possession—Bombay Land Revenue Act (V of 1879), s. 83—Burdens of proof.—The plaintiff's predecessor in title acquired the lands in dispute in A. D. 1780. The defendants were in possession as tenants. They proved their possession so far back as 1812. But it did not appear that they were put in possession first in that year. There was no evidence either of the commencement or of the duration of their tenancy. *Held* that, under s. 83 of the Bombay Land Revenue Code (Bombay Act V of 1879), the defendants' tenancy should be presumed to be perpetual, and that it lay on the plaintiff to prove the contrary. *DATLATA v. SAKHANAN GANGADHAR*

[*I. L. R., 14 Bom., 302*

139. ——— **Tenure in property, Proof of—Long possession at an invariable rent—Local usage or custom.**—A tenure in perpetuity cannot be established merely by evidence of long possession at an invariable rent, unless it appears that such tenancy may be so acquired by local usage. *Babaji v. Narayan, I. L. R., 5 Bom., 330, referred to. NARAYANBHAT v. DATLATA*

[*I. L. R., 15 Bom., 647*

140. ——— **Tenancy not more than forty years old—Bombay Land Revenue Act (Bom. Act V of 1879), s. 83—Tenancy not permanent.**—S. 83 of the Land Revenue Code (Bombay Act V of 1879) is applicable only when the evidence as to the commencement and duration of the tenancy is not forthcoming by reason of its antiquity, which, in the case of a tenancy at most only forty years old, there is no reason for presuming will be the case. *KALIDAS LALIDAS v. BHAIJI NARAN*

[*I. L. R., 16 Bom., 646*

141. ——— **Tenancy forty years old—Evidence of commencement and origin of tenancy—Bombay Land Revenue Code (Bom. Act V of 1879), s. 83.**—S. 83 of the Land Revenue Code (Bombay Act V of 1879) does not apply to a tenancy which commenced about forty years ago, but it applies to a tenancy with respect to which there is no satisfactory evidence to show the commencement as well as the terms of the tenancy. *IAKSHMAN v. VITHU*

[*I. L. R., 18 Bom., 221*

142. ——— **Permanent tenancy—Bombay Land Revenue Code (Bom. Act V of 1879), s. 83—Absence of local usage.**—The mere fact that a tenancy has commenced subsequently to the commencement of the landlord's tenure does not prevent the application of s. 83 (1) of the Bombay Land Revenue Code (Bombay Act V of 1879), in cases where, by reason of the antiquity of the tenancy, no satisfactory evidence of its commencement is forthcoming. *G* held certain lands as a tenant under *M*, an inamdar. The lands continued in *G*'s family for

LANDLORD AND TENANT—continued.**9. NATURE OF TENANCY—continued.**

nearly 60 years. It was found that, owing to this antiquity of the tenancy, its commencement or duration could not be satisfactorily established by evidence. *Held* that in the absence of any local usage to the contrary *G*'s tenancy must be presumed to be permanent. *RAMCHANDRA NARAYAN MANTHI v. ANANT*

[*I. L. R., 18 Bom., 433*

143.

Right of occupancy—Undisturbed possession—Construction of grant—Conduct of parties.—In a suit for ejectment brought by the trustee of a temple, the defendants set up a right of occupancy as permanent tenants. It appeared that the defendants' ancestor had held the village from the Collector (then in charge of the temple properties) under a lease which expired in 1831, when he offered to hold it for two years more. The Collector made an order that, if the tenant would not hold the land at the existing rate permanently, he should be required to give security for two years' rent. Two "permanent" muchalkas were subsequently taken from the tenant successively, but they were returned as not being in proper form. No further document was executed, but the tenant and his descendants remained in undisturbed possession at the same rate of payment up to 1888. In that year the plaintiff sent a notice of ejectment to the then tenant, who, however, set the plaintiff at defiance and remained in possession till the present suit was brought in 1890. *Held* that it should be inferred that the defendants were in possession under a permanent right of occupancy. *VARADARAJA v. DOMASANI*

[*I. L. R., 16 Mad., 131*

144.

Sheri and khata lands—Rights of khata tenants not holding under express contract, how proved—Evidence as to similar tenants in similar villages admissible—Custom—Mirasidars—Liability to enhancement of rent.—In a suit for ejectment for non-payment of enhanced rent the defendants pleaded (1) that they were permanent tenants; (2) that the plaintiff had no power to enhance; (3) that the enhancement by the plaintiff was unreasonable. The lower Courts held that the defendants were permanent tenants, but were bound to pay a reasonable rent. Their decision was not based on evidence given in the case, but on what was termed a "well-known distinction between the sheri or private lands of an inamdar and the khata or raiyatwar lands held by recognized tenants." The exercise of certain rights of transfer or inheritance, etc., were regarded as evidence of fixity of tenure at a reasonable rent. On second appeal by the plaintiff the High Court held that they were not bound by the findings of the Judge, as it did not appear that it was admitted that the distinction drawn between sheri and khata tenants was correct, or that every khata tenant, as such, exercised the right described by the Subordinate Judge. In determining the rights of khata tenants who held under no express contract, the best evidence no doubt, if possible, would be the evidence of custom in the particular village in question, but evidence of similar

LANDLORD AND TENANT—continued**8 PAYMENT OF RENT—concluded**

and above the mere failure to pay rent *PREM SUKH DAS v BHUTIA* I. L. R., 2 All., 517

132. ————— *Acquiescence of landlord, Effect of—Subsequent suit by landlord for possession—Inam land—Sub-tenance—Wrongful surrender by the village inamdar to Government—Limitation—Remand—The plaintiff, a sub-*

made khalast In 1863, the plaintiff protested or referred From the from D or the assess

tested against it in 1863, and that as to his conduct

133. ————— *Dilution, Disappearance of land by—Subsequent re-appearance of land—Relinquishment of tenancy, Evidence of—N. W. P. Rent Act (XII of 1881)—Act XII of 1881*

provided for by statutory enactment but mere non-payment of rent does not of itself determine the tenancy Hence where the lands of certain tenants

Hemnath Dutt v Ashgur Sirdar, I. L. R., 4 Calc., 394 not followed *MAZHAR RAI v RAMGAT SINGH* [I. L. R., 18 All., 280]

LANDLORD AND TENANT—continued.**9 NATURE OF TENANCY.**

134. ————— *Presumption as to nature of tenancy—Yearly tenant*.—Where there is nothing to show on what tenure a tenant holds from his landlord, the presumption is that he is a yearly tenant *LYDAH LALA v LALLU HUMI* [7 Bom., A. C., 111]

GOORDIAL v RAMDUT [Agra, F. R., 15 Ed. 1874, 11]

135. ————— *Holding for long period with payment of rent—Tenancy from year to year*.—In a suit to recover a village allotted by the

[3 Mad., 1]

136. ————— *Long continuance of a tenancy at a low and unvaried rent—Zamindar's right against tenant—Origin and special purpose of the tenancy—Cessation to use the land for such purpose—Burden of proving permanent tenure—Inference of tenancy at will, or from year to year—The evidence having shown the origin and particular purpose of a tenancy, long continued at a low and unvaried rent viz., from 1798*

agreement with the owner of the land that he should have something more of a lease than the ordinary tenancy at will, or from year to year, also that the facts here presented did not lead to that inference, *SECRETARY OF STATE FOR INDIA v LUCHMESWAR SINGH* I. L. R., 16 Calc., 323 [I. R., 16 I. A., 6]

137. ————— *Lease for construction of permanent works—Permanent tenure—Conduct of lessor*.—The defendants and their predecessors in title held of the plaintiffs and their predecessors certain land under a pottah which, though not expressly stated to grant a permanent lease, was granted for the purpose of constructing "a brick-built dock, building, etc., and workshops" The works were constructed, and during a period of 42 years the interest of the leasees went from time to time on, and ceased to be used as such. Held that the tenure created by the pottah was of a permanent nature. *Secretary of State for India v Luchmeswar Singh*,

LANDLORD AND TENANT—continued.**9. NATURE OF TENANCY—concluded.**

notice. *Held*, further, that the letter of the 18th March 1873 was a sufficient notice. There is nothing which makes it a necessary inference that a tenancy in Calcutta is a tenancy by the year, in the absence of any contrary. So far as there any inference of fact to be drawn from mere occupation accompanied by payment of a monthly rent, it is that the tenancy is a monthly one. **NOCORNBASS MULLICK v. JEWRAJ BANO** . 12 B. L. R., 263

151. —Duration of tenancy—Transfer of Property Act (17 of 1882), ss. 106, 107—Presumption of yearly tenancy—Evidence—Burden of proof in action of ejectment by zamindar against tenant as to nature of tenancy.—Suit for ejectment by a zamindar against two tenants holding under him subject to the payment of an annual cist or assessment. The zamindar was the owner of the kudivaram as well as of the melvaram right, and it was admitted that the tenants' possession was derived from him. *Held* that these facts alone were not enough to raise the presumption of a tenancy from year to year. *Per* **SHERMAN, J.**—It is not the general rule that the tenants in an ordinary zamindari hold their lands as yearly tenants or as tenants from year to year. Many of the occupants of zamindari lands are not tenants in the proper sense of the word, and the fair presumption is that when new occupants are admitted to the enjoyment of waste or abandoned lands, the intention is that they should enjoy on the same terms as those under which the prior occupants of zamindari lands held, it being open to the zamindar to rebut that presumption, either by proving that the usual condition of thing does not prevail in his estate or that a particular contract was made between him and his tenant. *Per* **SUBRAHMANYA AYYAR, J.**—The presumption of tenancies from year to year which is well known to English law, because of the general prevalence in England of tenancies in the strict legal sense of the term, would also arise in this country if the tenancies here were proved to be similar. But inasmuch as practically the whole of the agricultural land on zamindaris is cultivated by raiyats who are generally entitled to hold them so long as they desire to do so, subject to the performance of obligations incident to the tenure, there is insufficient foundation from which such a presumption may be raised. Nor is the fact that the zamindar is the owner of the kudivaram right as well as the melvaram right sufficient to shift on to the raiyat the burden of proving that the tenancy is not one from year to year. In order to discharge the onus which is on him in a case of ejectment, the zamindar must do more than merely show that the land when it passed into the hands of the raiyat was at his disposal as relinquished or as immemorial waste land. He must show that the defendants' possession is inconsistent with the *prima facie* view that it is held under the usual and ordinary form of holding prevalent in the zamindaris. **Achayya v. Hanumantrayudu, I. L. R., 14 Mad., 269**, explained. **CHERKATI ZAMINDAR v. RANASOORU DHORA** [I. L. R., 23 Mad., 318]

LANDLORD AND TENANT—continued.**10. HOLDING OVER AFTER TENANCY.**

152. — Tenant holding over after lease—*Tenancy from year to year—Agricultural lease.*—When a tenant holds over, after the expiration of his lease, he does so on the terms of the lease, on the same rent and on the same stipulation as are mentioned in the lease until the parties come to a fresh settlement. There is no general rule of law to the effect that the lease of an agricultural tenant in this country who holds over must be taken as renewed from year to year, and if any contract is to be implied, it should be taken to have been entered into so soon as the term of the lease expired rather than at the beginning of each year. **KISHORE LAL DEY v. ADMINISTRATOR-GENERAL OF BENGAL**

[2 C. W. N., 303]

153. — Terms of holding over after lease has expired—*Terms of lease.*—When a tenant holds on after the expiration of a lease, he does so at the same rent and on the same terms and stipulations as are mentioned in the lease, until the parties come to a fresh settlement. **ENAYATOOLAH v. ELAHEE BUKSH**

[W. R., 1864, Act X, 42]

SHIB SAKAE v. MUKBOOL AHMED . 2 N. W., 204**TARA CHUNDER BANERJEE v. AMEER MUNDOL**

[22 W. R., 395]

ALLAH BIBEE v. JOOGUL MUNDUL

[25 W. R., 234]

154. — Current rates for similar land.—A raiyat who holds over after the expiry of his lease, in spite of his landlord, is liable to pay at the rates current for the same kind of land in the village. **TOMMY v. SOOBHA KURIM LAL**

[2 W. R., Act X, 73]

155. — Evidence of rate of rent.—Where a tenant continues to hold land after his term, his pottah will be evidence of the rent at which he is holding over, in the absence of evidence to the effect that the rent was altered subsequently to its expiration. **SHEO SAHOY SINGH v. BROHUN SINGH** 22 W. R., 31

156. — Conditions of tenure.—Where on the expiration of a lease the lessee is allowed to continue in possession as a yearly tenant, he does so on the terms contained in the expired lease, so far as they are consistent with a yearly holding. **SATAJI v. UMAJI** . 3 Bom., A. C., 27

157. — Right of tenant holding over—*Holding over by acquiescence of landlord after lease has expired—Notice to quit.*—A landlord who, after the expiration of a lease, continues to receive rent for a fresh period, must be considered to have acquiesced in the tenant continuing to hold upon the terms of the original lease, and cannot turn out the tenant, or treat him as a trespasser, without giving him a reasonable notice to quit. **RAM KHALWAN SINGH v. SOONDBA** 7 W. R., 152

158. — Liability to ejectment.—*Notice to quit.*—A tenant holding over for some time without renewal of his lease is entitled,

LANDLORD AND TENANT—continued**9 NATURE OF TENANCY—continued**

tenants in similar villages would not be excluded. Mirasidars in an unam village cannot always claim to hold at a fixed rent. An unnamdar can enhance their rents within the limits of custom. **VISHVANATH BHASKARI v. DHONDAPPA**. I. L. R., 17 Bom., 475

145. — Lease by temple-trustee—Ulavada mirasidars—Long possession—

Necessity for lease presumed—In 1813 the manager of the temple of one-half of

of 1832 was executed, but the defendants held possession as tenants from 1832 to date of suit. *Held* that the words ulavada mirasidars used in the

a necessary purpose and were binding on the temple. **CHOCKALINGAM PILLAI v. MAYANDI CHETTIAR**. I. L. R., 19 Mad., 485

146. — Cultivating

rayat on permanently-settled estate—A rayat cultivating land in a permanently settled estate is *prima facie* not a mere tenant from year to year, but the owner of the kudivatam right in the land he cultivates. **VENKATANABASIMHA NAIDU v. DANDANUDI KOTAYYA**. I. L. R., 20 Mad., 293

147. — Presumption

arising from facts of permanency of tenancy—

the other alienations alleged to be ushar-mukuradars under the first Part of the evidence for the defence consisted of judgments among which was one of the year 1817, and another of 1843, to which the zamindar's predecessors had not been parties. These had been given in suits brought by the successor of the ghatal which had been resisted by the first defendant's ancestors on the ground of their having had fixity of tenure. *Held* that they could be received as evidence of long anterior possession at a rent, and of the title,

LANDLORD AND TENANT—continued**9 NATURE OF TENANCY—continued.**

on which the defendants now relied, having been openly asserted long ago. Taken with other evidence,

[12, 13, and 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100]

148. — Presumption as

to tenancy being permanent—Long possession—Transfers of holding and erection of buildings—Where a tenancy was created by a habuliat, which

though the land passed by successive transfers, there was nothing to show that the landlord had knowledge of them or registered the transfers as tenant, that though there were pucca buildings on the land, they had not been in existence for such a length of time as would warrant an inference that the lease was one for building purposes, that there was nothing to show that they were erected under

not sufficient to warrant an inference that the tenancy was when first created, intended to be permanent, or was subsequently by implied agreement converted into a permanent one. **IMAIL KHAN MAHOMED v. JAIGUN BISHI**. I. L. R., 27 Cal., 570 [4 C. W. N., 210]

149. — Construction of lease—

defendant became the assignee of the lease without notice to A from August 1859, and continued to occupy the premises and paid the rent in the name of B up to August 1866, though the lease had expired on 31st October 1865. *Held* that the tenancy after the expiration of the lease was a monthly tenancy in the name of B and terminable by a monthly notice to quit. **BRIDGEWORTH MELTRICK v. WESKINS**. 2 Ind. Jur., N. S., 163

150. — Holding over after expiry

of lease—Monthly or yearly tenancy—Notice to quit—A and B let a house and premises in Calcutta to C under a Bengal lease, for a period of three years, from 1st Assir 1273 (14th June 1861). Upon expiration of the term C continued in possession of the house, and A and B, after repeatedly calling him to quit, continued to receive the rent day after day. C continued to occupy the house till the end of his lease, held merely from month to month, and that the tenancy was terminable by a month's

LANDLORD AND TENANT—continued.**10. HOLDING OVER AFTER TENANCY**
—continued.

if the tenant continue to hold, he does so without any rent having been fixed. A suit by the landlord to recover his dues in such a case would be not a suit for rent, but for reasonable compensation for the use and occupation of the land, and the Court would have no power to fix the rent for the future. **KYLASH CHUNDER SIRCAR v. WOMANUND ROY**

[24 W. R., 412]

See **LALUNMONEE v. AJOODHYA RAM KHAN**

[23 W. R., 61]

170.

Termination of tenancy and alteration of rent after notice to quit—Suit for use and occupation.—A landlord who can terminate his tenant's tenancy by a reasonable notice to quit can also, without giving a positive notice to quit, raise the tenant's rent by serving a reasonable notice upon him that in the ensuing year he will require a higher rent. In a suit to recover such rent whether governed by Bengal Act VIII of 1869 or not, the Court has power to find the tenant liable to pay a reasonable sum for occupation. **BUDUN MOLLAH v. KHETPUR NATH CHATTERJEE**

[24 W. R., 441]

171.

Consent of landlord—Trespasser—Damages for use and occupation.—To justify a holding over after expiry of lease, a direct consent on the part of the landlord is requisite. No implication of consent can or ought to be received when there has been every opportunity of consent in express terms, and particularly in the face of a special warning from the landlord that he should re-enter on the land when the term expired. When tenants have no right to hold over, their use and occupation of the land is a trespass, and they are liable, not for rent as tenants, but for damages as trespassers. **MACKINTOSH v. GOPPEE MOHUN MOJOMDAR**

[4 W. R., 24]

172.

Settlement with tenant containing a clause for re-entry—Compensation in lieu of rent—Use and occupation—Trespassers.—The plaintiff made a settlement of certain land with A and B for five years, there being in the settlement a stipulation that, if the tenants failed to pay rent, the plaintiff might accept another tenant. A died during the tenancy, and B left the place and the property without paying rent, and thereupon the plaintiff entered into possession of the property and held khas possession of it for two years, when he in 1870 entered into a settlement of it with defendant No. 1 for six years. In 1878 B died, and defendants Nos. 2 and 3, alleging themselves to be the chela and dasiputra of B, took upon themselves to collect rent from the tenants. The plaintiff thereupon brought a suit against the three defendants, treating them as trespassers, but at the same time asked for the amount of rent due and for eviction. *Held* that defendants Nos. 2 and 3 had no right on the property at all, and that defendant No. 1, who might have been considered as holding over after the expiration of his lease, if he had been in actual sole possession, should not be made liable for the whole rent

LANDLORD AND TENANT—continued.**10. HOLDING OVER AFTER TENANCY**
—concluded.

when defendants Nos. 2 and 3 were in possession as much as he was; but that, as the plaintiff had elected to waive the trespass, all the defendants might, on the authority of **Lalun Monee v. Sona Monee Dabee**, 22 W. R., 333, and **Lukhee Kant Dass Chowdhry v. Sumeeruddi Lusker**, 13 B. L. R., 243; 21 W. R., 208, be treated as tenants, and a decree for use and occupation given against them. **SURNOMOYEE v. DINONATH GIR SUNNYASSEE**

[I. L. R., 9 Calc., 908; 13 C. L. R., 69]

173.

Ejectment, Delay in executing decree for—Possession of tenant until execution—Suit for damages.—A plaintiff who had obtained a decree for ejectment under s. 25, Act X of 1859, and did not execute that decree for some months after, is not entitled to a decree in a suit subsequently brought for damages, in respect of the same lands, for the period included between date of the institution of the ejectment suit and the execution of the decree in that suit, the occupation of the defendants being the occupation of tenants-at-will and not of trespassers. **AYMEL ISLAM v. JARDINE, SKINNER & Co.**

8 W. R., 501

11. DAMAGE TO PREMISES LET.**174.**

Damage by fire—Negligence—Defect in building.—The plaintiff hired a thatched bungalow of the defendant, entered into possession, and after living in the house some time lit a fire in the fire-place in one of the rooms. The chimney took fire, and the plaintiff's furniture was destroyed. He subsequently ascertained that the chimney had been thatched over, of which fact he had been all along ignorant. *Held* that the landlord, defendant, was liable in damages for the loss sustained by him. *Per* KEMP, J.—The landlord should have given the plaintiff notice of the defective construction of the chimney. The plaintiff had a right to assume that it was properly built. **RADHA KRISHNA v. O'FLAHERTY**

[3 B. L. R., A. C., 277; 12 W. R., 145]

175.

Damage by storage of goods—Warehouse—Damage—Suit for negligence—Onus probandi.—The plaintiff let to the defendants a godown on an upper storey over his own godown for the purpose of storing goods, the only stipulation in writing being that no combustible or hazardous goods should be stored there. The plaintiff alleged that the premises were taken by the defendants on the understanding that the defendants should use the same in a tenant-like manner, yet the defendants used them in an untenant-like manner, and loaded an unreasonable and improper weight on the floor, whereby it broke through and damaged the plaintiff's goods below. The evidence showed that the godown had been used by former tenants for storing light goods, but, in addition to light goods, the defendants had, at the time the floor broke, stored upon it several casks of white and red lead and some cases containing tin plates. The evidence of professional witnesses

LANDLORD AND TENANT—continued.**10 HOLDING OVER AFTER TENANCY***—continued*

whether he has any right of occupancy or not, to retain possession of his tenur until either he resigns it or is ejected in due course of law. **OMMA LOCHUN MOJOMDAR v. NITYE CHUND PODDAR**

[14 W. R., 467]**159. ——— Notice to quit**

—Where a tenant has been allowed to hold over leases on the expiry of their terms and has continued in possession under those leases, it must be supposed that there is an implied agreement between him and the landlord, and the tenant under such circumstances is entitled to hold on until served with a legal notice to quit. **JUMANT ALI SHAH v. CHOWDAY CHUTTURDHAREE SARKH**

18 W. R., 185**160. ——— Notice to quit**

tenant cannot be evicted without a reasonable notice

MAAUND LALL**[I. L. R., 7 Calc., 710 9 C. L. R., 240]**

161. ——— Liability of tenant holding over—Ejectment, Liability to—If a tenant holds his land for a term of years, and no new tenancy is created by the zamindar on the termination of the term

162. ——— Tenant-at-will, Rate of rent for—A zamindar who allows a tenant to remain on his land without express contract can only demand a fair rate of rent, i.e. the full market rate. **MOVEROUDREY MERDHA v. KEERNIE**

[4 W. R., Act X, 45]**GOPAL LAL THAKOOR v. BUDURODREY****[7 W. R., 28]**

163. ——— Trespasser—Where a lessee whose lease has expired, and who

164. ——— Increase of rent

Agreement for specified period—The

LANDLORD AND TENANT—continued.**10 HOLDING OVER AFTER TENANCY***—continued*

obtained an order from the Government the plain

for enhancement having been taken or fresh contract with the defendant entered into, the special arrangement came to an end at the expiration of 1232 and

This case was distinguished where there was no agreement for a specified period. **BURNINGDDI HOWLADAR v. MOHUN CHUNDER GUHA**

[8 C. L. R., 511]**165. ——— Acquiescence of landlord**

four. The landlord's cause of action in such a case arises when he is refused the right to re-enter. **KADREL SANA v. RADHA KISSAN MULLICK**

[18 W. R., 146]**166. ——— Dispossession of tenant**

is still the person entitled to possession. **ARUN v. ASHRAF**

24 W. R., 335

167. ——— Suit against tenant holding over—Suit on contract or for use and occupation—Where there is an express contract, the zamindar can only sue on the terms of the contract and cannot sue for use and occupation. **WATSON & Co v. TABINZE CHURN GANGOOOL**

17 W. R., 494**DHUNENDRO CHUNDER MOOKERJEE v. LAIDLAY****[20 W. R., 400]**

168. ——— Use and occupation of building under unregistered lease—A party who retains and holds a building under an

CHUNDER DOSS**12 W. R., 289**

169. ——— Liability to change of rent—Notice—Use and occupation of

LANDLORD AND TENANT—continued.**13. REPAIRS—concluded.**

by any act of God or inevitable accident any material portion of the property became unfit for the purpose for which it was let, the lessee had the option to avoid the lease, but no right to claim damages against the lessor. *STUART v. PLAYFAIR*. 2 C. W. N., 34

182. ——— Lease - Cove-

nant to "keep premises wind and watertight and in habitable condition"—*Damage by earthquake, Liability to repair—Transfer of Property Act (IV of 1882), s. 108, cl. (m)*.—Where a lessee covenanted to "keep the premises wind and watertight and in habitable condition," and the premises were subsequently damaged by earthquake, *Held* that the lessee was bound by his covenant whether or not the damage was caused by an earthquake or other irresistible force; that the covenant was a contract to the contrary within the meaning of s. 108, Transfer of Property Act, and cl. (m) of that section did not apply; and that the defendant was not liable to do all and every repair that became necessary by reason of the earthquake, but only to make good the damage caused to the premises by the earthquake to the extent of making them wind and watertight and in habitable condition. *Proudfoot v. Hart, L. R.*, 25 Q. B. D., 44, referred to. *HECHLE v. TELLEY* [4 C. W. N., 521]

14. TAX.**183. ——— Liability for tax—House**

built by tenant.—The owner of the land is not liable for the tax assessed on a house built upon the land by his tenant. *WOOMA NUNDO ROY v. BROWNE* [6 W. R., Civ. Ref., 30]

15. ALTERATION OF CONDITIONS OF TENANCY.**(a) POWER TO ALTER.****184. ——— Mortgagee of tenant—**

Change of nature of tenure without authority from landlord.—When the conditions of a tenure have been settled by a compromise between the landlord and tenant, a subsequent mortgagee has no power to change the conditions so as to bind the landlord unless he has power expressly given him in that behalf, and the tenant is estopped from denying the conditions. *HUR PERSHAD v. OODIT NARAIN* [1 Agra, Rev., 60]

(b) DIVISION OF TENURE AND DISTRIBUTION OF RENT.**185. ——— Change in position of ten-**

ants and rent payable for each portion of land.—A landlord, who has let out land at a certain rent, payable in one sum for the whole, cannot, without the consent of the tenant, alter the position of the latter and say that in future so much shall be payable in respect of one parcel only, and so much in respect of another. *KALEE CHUNDER AICH v. RAM-GUTTY KUR*. 25 W. R., 95

LANDLORD AND TENANT—continued.**15. ALTERATION OF CONDITIONS OF TENANCY—continued.**

186. ——— Breaking up tenures with-
out consent of tenants—Liability for rent.—Where tenants hold land by different agreements, the zamindar has no right without their consent to break up existing holdings and redistribute lands so as to alter the extent and nature of the holdings. *RUHEM-UDDY AKUN v. POORNO CHUNDER ROY CHOWDHRY* [22 W. R., 336]

187. ——— Splitting claim for rent—
Suit for rent under a lease of several estates where the rent is a lump sum.—Where the rent reserved by a lease of several estates is a lump sum, a claim to recover it under the lease cannot be split and apportioned. *OOSMAN KHAN v. CHOWDHRY SHEORAJ SINGH*. 5 N. W., 42

188. ——— Division of holding by ten-
ant—Recognition of, by landlord.—A zamindar may recognize the division of a holding either formally, by actually dividing it into parts, or impliedly, by receiving rent from parties holding separately. *OOMA CHURN BANERJEE v. RAJLUCKHEE DERIA* [25 W. R., 19]

189. ——— Consent of land-
lord—Act X of 1859, s. 27.—Under s. 27, Act X of 1859, no division of tenure or distribution of rent is valid or binding without the consent in writing of the landlord. *UPENDRA MOHUN TAGORE v. THANDA DAS*. 3 B. L. R., A. C., 349

S. C. WOOPENDRO MOHUN TAGORE v. THANDA DOSSIA. 12 W. R., 263

SADHAN CHANDRA BOSE v. GURU CHARAN BOSE [8 B. L. R., 6 note: 15 W. R., 99]

190. ——— Acquiescence by
landlord.—But where a zamindar himself put up a tenure for sale in separate lots, and took rents from two of the purchasers separately, it was held that no written consent was necessary in order to his being bound to recognize the partition. *NUBO KISHEN MOOKERJEE v. SREERAM ROY*. 15 W. R., 255

191. ——— Consent of land-
lord—Power to consent—Farmer.—*Held* by a majority of the Court (*dissentiente STEER, J.*) that the farmer of a Government khas mehal, as the party entitled to the rents, can accept a surrender of a tenure, and therefore is competent to assent to the division of a raiyati holding within his farm into several distinct and separate holdings. *HUBEE MOHUN MOOKERJEE v. GORA CHAND MITTER* [2 W. R., Act X, 25]

192. ——— Agreements as to division
—Act X of 1859, s. 27—Liability for rent.—The provision of Act X of 1859, which requires that every agreement as to division or distribution of rent should be in writing, applies only to division or distribution made after the Act came into operation. *ALLENDER v. DWARKANATH ROY*. 15 W. R., 320

LANDLORD AND TENANT—continued**11. DAMAGE TO PREMISES LET—continued.**

showed that a warehouse floor ought to be able to bear 1½ cwt per superficial foot, and there was evi-

was to the effect that the floor was not a perfect one upon which to store merchandise, but that 1½ cwt was not a dangerous weight for a warehouse floor to bear, and that no unprofessional person could have anticipated danger from it in the present instance. There was also evidence to show that the girders

or unreasonable weight had been placed by the defendants upon the floor, or such as a tenant exercising ordinary caution might not have placed there. **KOZLER v. LYLE**

[5 B L R., 401; 14 W R., O C., 46]

179 ——— Destruction of plants by fire—Transfer of Property Act (IV of 1882), s 108, cl (e)—Lease of coffee garden—Voidability of lease—The plaintiff was the assignee

coffee plants had been destroyed by fire, and the garden had been consequently abandoned by the defendant before the period to which the claim related. *Held* that the plaintiff was not entitled to recover. **KUNHAYEN HAJI v. MAYAN**

[L L R., 17 Mad., 98]

ment in a certain godown for storing goods for twelve months for a sum of Rs 450 and a second compartment in the same godown for twelve months for Rs 368. The plaintiffs entered into possession. In August 1896 in accordance with the practice, the plaintiffs paid the said two sums in advance to the defendant and got a receipt. On the 30th October 1896 without any default of the plaintiffs the whole godown including the said two compartments was destroyed by fire and rendered wholly unfit for the purpose of storing goods. The plaintiffs thereupon sued for a refund of a proportionate part of the money paid to the defendant, relying upon s 108, cl (e)

LANDLORD AND TENANT—continued.**11 DAMAGE TO PREMISES LET—concluded**

of the Transfer of Property Act and s 65 of the Contract Act. *Held* that they were entitled to recover. The consideration was for the whole year. The lease, i.e., the whole contract, had become void and therefore under s 65 of the Contract Act the defendant, who

12 DEDUCTIONS FROM RENT

178 ——— Right to hajats or remissions of rent—Discretion of landlord—A raiyat can have no claim in law to hajats (or remissions), which being acts of grace on the part of the landlord rest solely on his discretion. **PANAGOLLAH NASHYO v. NUNOBEET CHUNDER BHARA** 15 W R., 270

13 REPAIRS

179 ——— Liability for repairs—Construction of lease—Where certain premises were let under an agreement in which the tenant covenanted as follows: "I will make the necessary repairs to the buildings at my own cost, if by reason of my not so repairing any injury occur to a building, or it become broken, I will restore it" it was held that it would not be a fair construction to hold that if, whilst the buildings were in good repair and the tenant had done all the necessary repairs they were blown down or injured by a cyclone the liability to restore them should fall upon the tenant. The agreement bound the tenant only to restore buildings, which it became necessary to restore in consequence

180 ——— Deduction from

181. ——— Covenant to renew lease—Lessee's liability to keep demised premises in repair—Extent of lessor's liability—Compensation for lessee's loss for not repairs by lessor—Transfer of Property Act (IV of 1882, as amended by Act III of 1895), s 105—In the absence of express covenant in the lease how far

up the premises in good repair after expiry of lease, God or in- is not im- imposed 1882 as principle of equity require such a result. *Held* further that, if

LANDLORD AND TENANT—continued.**15. ALTERATION OF CONDITIONS OF TENANCY—continued.**

202. ——— Power of tenants to construct wells without consent of landholder — *N. W. P. Rent Act (XII of 1881), s. 41.*—Held that, having regard to s. 41 of the N. W. P. Rent Act, 1881, an occupancy tenant may, if such well be an improvement within the meaning of the section, construct either a kutchi or pucca well on his holding without any reference to the consent of the zamindar. *Raj Bahadur v. Bircha Singh I. L. R., 3 All., 85*, and *Muhammad Raz Khan v. Dulip, Weekly Notes, All., 1892, p. 103*, referred to. *DHARAMBAS KUNWAR v. SUMRAN SINGH I. L. R., 21 All., 388*

203. ——— Rule prohibiting tenant from digging wells—*Forfeiture for breach of condition—liability to ejectment.*—Any rule which prohibits a tenant from improving his holding is one which, on grounds of public policy, Courts are bound to restrain within its strictest limits. When a zamindar insists on his right to prohibit the construction of kutchi wells, he should be required to prove that the right claimed by him customarily exists on the estate. Forfeiture is not bound to be deemed the invariable penalty for breach of contract occasioned by the construction of a well. When such forfeiture is claimed, and the right to claim it is proved, the Court should consider whether an adequate remedy cannot be secured to the landlord without depriving the tenant of his whole interest in the holding; and if it finds that such a remedy can be given, and that the tenant has not deliberately invaded his landlord's rights, but, admitting his own position as tenant, has acted in what he believed to be the exercise of a right, or in the honest belief that his act would not meet with objection on the part of the landlord, it should refuse to oust the tenant, and leave the landlord to seek a remedy which would be more proportionate to the injury he has sustained, and amply relieve him from its effects. *SAROCHUN v. BISSUNT SINGH RAMJUN SINGH v. MEHDER [3 N. W., 232; Agra, F. B., Ed. 1874, 258*

204. ——— Prohibition to excavation of tank—*Sub-tenant—Breach of stipulation in lease—Excavation of tank.*—The plaintiff let a piece of land to *M.* and by the terms of the lease it was stipulated that the lessee should not excavate a tank on the land. *M.* sub-let the land to *J.* and *N.*, who, in the course of their occupation, excavated a considerable plot of ground. The plaintiff thereupon brought a suit against *M.*, *J.*, and *N.* to have the ground restored to its former condition, or for damages. The first Court gave a decree for the plaintiff. The Judge was of opinion that *J.* and *N.*, not being parties to the original lease, could not be made liable in the suit, and he dismissed the suit as against them. The plaintiff appealed, making *J.* and *N.* only respondents. Held that *J.* and *N.* had no right to use the land in contravention of the terms of the lease, and that, if the plaintiff proved that their acts were in breach of the stipulation in the lease to *M.*, he was entitled to the assistance of the Court in getting the land restored as nearly as possible to its former condi-

LANDLORD AND TENANT—continued.**16. ALTERATION OF CONDITIONS OF TENANCY—continued.**

tion. MONINDRO CRUNDER SIKKAR v. MONERUD-DEEN BISWAS

[11 B. L. R., Ap., 40 : 20 W. R., 230

(c) ERECTION OF BUILDINGS.

205. ——— Right to erect buildings—*Tenant of non-agricultural land—Injunction to restrain erection.*—Although where land is let for building pucca houses upon it, or where the tenant with the knowledge of the landlord does in fact lay out large sums upon the land in buildings or other substantial improvements, that fact, coupled with a long-continued enjoyment of the property by the tenant or his predecessors in title, might justify a Court in presuming a permanent grant, especially if the origin of the tenancy could not be ascertained; yet the mere circumstance of a tenant occupying buildings upon property will not justify such a presumption, unless it can be shown that they were erected by him or his predecessors, because a landlord might let property of that kind as agricultural land at will or from year to year. *Prosunno Coomare Debea v. Rutton Bepary, J. L. R., 3 Calc., 696 : 1 C. L. R., 377*, considered. *Lal Sahoo v. Deo Narain Singh, I. L. R., 3 Calc., 781*, distinguished. Where land has, with the consent of the landlord, ceased to be agricultural, and the tenant has since built a homestead or used part of it for tanks or gardens, the nature of the tenure is not thereby changed, nor is the tenant thereby deprived of any right of occupancy which he might have acquired. See *Nyamatoollah Ostagar v. Gobind Charan Dutt, 6 W. R., Act X, 40. PROSUNNO COOMAR CHATTERJEE v. JAGUN NATH BAIKAK 10 C. L. R., 25*

Reversing decision in *JAGGANATH BAIKAK v. PROSONNO COOMAR CHATTERJEE 9 C. L. R., 221*

206. ——— Erection of buildings by tenant-at-will or tenant from year to year—*Determination of tenancy—Notice to quit.*—There is no law in this country which converts a holding at will from year to year, or for a term of years, into a permanent tenure, merely because the tenant, without any arrangement with his landlord, builds a dwelling-house upon the land demised. *PROSONNO COOMARE DEBEA v. RUTTON BEPARY [I. L. R., 3 Calc., 698 : 1 C. L. R., 577*

207. ——— Grant of land—*Presumption as to nature of tenure—Erection of buildings—Rastu land—Suit to eject.*—Where it is recorded that lands were not let out for agricultural purposes, but that they had apparently been let out more than sixty years before suit for building purposes, the defendant's ancestors having erected thereon a house more than sixty years before suit, and having, with the defendants, resided there from first to last, the Court is at liberty to presume that the land was granted for building purposes, and that the grant was of a permanent character. *Prosunno Coomare Chatterjee v. Jagun Nath Bysack, 10 C. L. R., 25*, followed. *Prosunno Coomare Debea v.*

LANDLORD AND TENANT—continued**15 ALTERATION OF CONDITIONS OF TENANCY—continued****(c) CHANGE OF CULTIVATION AND NATURE OF LAND**

193 ——— Allowance of time for change of cultivation—*Irrigated and unirrigated land*—Where a landlord claimed to revert to *nanja* rates of rent (rent assessed on irrigated land), on the ground that he had repaired a tank, which for years had been unrepaired,—*Held* that a reasonable time must be allowed to the tenant to prepare for change of cultivation **LAKSHMANAN CHETTI v. KOLANDAYELU KUDUMBAN** **I. L. R., 6 Mad., 311**

194 ——— Changing the nature of

porary leases from their co-defendants who were holders of small jotes within the plaintiff's *zamin-dari* and to recover damages for alleged injury done to the lands, where the evidence showed such a continued use of the land for twenty five years for

with an *injunctio*—*Held* that it was not made out for the issue of an injunction **TARINER CHURN BOSE v. RAMJEE PAL** **23 W. R., 298**

195 ——— Right of tenant to change nature of land—No tenant taking land is entitled, without some specific agreement on the subject, to change the nature of that land, or to make any permanent alteration in the state of the landlord's property If a person wishes to lease

196 ——— Forfeiture—Waste—Planting a mango tree on dry land—In

(d) DIGGING WELLS OR TANKS

197 ——— Right to dig well—*Mokurrari*

198 ——— Right of tenant to dig well for use of himself and other residents in village—A tenant with a right of occupancy, who failed to show that he had a right, by custom or

LANDLORD AND TENANT—continued.**15 ALTERATION OF CONDITIONS OF TENANCY—continued**

otherwise, to construct a well without his landlord's

199 ——— Custom—*Ac-*

200 ——— Breach of covenant not to dig tank—*Suit by zamindar*—For breach of a

or he may sue for cancellation of the lease, and he may also sue for damages occasioned by the excavation of the tank **BEER CHUNDER MANICK v. HOSEIN** **(17 W. R., 29)**

201 ——— Digging well or planting

cular local usage or express contract **HOONJ BEHARY PATUCK v. SHIVA BALUK SINGH** **[Agra, F. B., 119—Ed 1874, 69]**

LANDLORD AND TENANT—continued.**15. ALTERATION OF CONDITIONS OF TENANCY—concluded.**

under such belief, stood by and allowed him to go on with the construction of the buildings. *Beni Ram v. Kandan Lal*, I. L. R., 26 I. A., 53; *Ramsden v. Dyson*, L. R., 1 E. & I., 4p., 129; *Jug Mohan Dass v. Pallonjee*, I. L. R., 22 Bom., 1; *De Busche v. Alt*, L. R., Ch. D., 286; *Kunhamed v. Narayanan Mussad*, I. L. R., 12 Mad., 320, referred to. Where it is proved that the tenancy is not a permanent one, that the tenant erected a pucca building on the land without the consent of the landlord, the tenant on eviction is not entitled to any compensation for the building from the landlord. *Dattatraya Rayaji Pai v. Hridhor Narayan Pai*, I. L. R., 17 Bom., 736; *Yeshwada v. Ram Chunder*, I. L. R., 18 Bom., 66, distinguished. *ISMAIL KHAN MAHOMED v. JAIGUN BIBI* I. L. R., 27 Cal., 570 [4 C. W. N., 210]

16. TRANSFER BY LANDLORD.

215. ——— *Assignee of lessor—Assignee of right to recover rent—Acquiescence of lessee.*—Where a landlord assigns his right to another, his lessee cannot put an end to the obligation to pay rent, if, after becoming aware of the arrangement, he made no objection. If the assignee dispossesses the lessee, he cannot sue the latter for rent. *GOVINDAL SINGH v. HUBEEL HOSSEIN* 14 W. R., 83

216. ——— *Right to rent—Attornment by lessee.*—A party succeeding to the proprietary rights of a lessor and dispossessing the lessee cannot sue such lessee in the Collector's Court for rent due from him as tenant, unless the latter has previously attorned to him. *RAM LALL MISSEER v. CHUNDRABULLEE DABEE* . . . 13 W. R., 228

217. ——— *Liability for rent to assignee of person admittedly in possession.*—A party holding an assignment from the landlord to recover rents from C, a registered tenant, having sued both C and D as co-tenants of the tenure, the suit against D was dismissed by the lower Courts. Held that, as the assignment respected the rents of that tenure and D had admitted being in possession of the land, the suit ought to have been allowed to proceed against both. *DHOOLEE CHUND v. RAJROOP KOOPER* . . . 15 W. R., 107

218. ——— *Change in proprietary title of estate—Right of patnidar to eject tenant.*—A mere change in the proprietary title of an estate does not entitle a patnidar, who holds from the new proprietor, to eject a tenant who can prove a right of occupancy. *RAM GHOSE v. RADHA CHURN GANGOOLY* . . . 15 W. R., 416

219. ——— *Transfer by landlord or person having right to receive rent—Right of assignee to realize rent.*—A, a zamindar granted lands on kaul to B. B assigned to C, but the lands being mostly in the hands of cultivators, C only occupied those that had been in B's possession. The kist fell into arrear, and A attached property of C's. Notice of the attachment was given

LANDLORD AND TENANT—continued.**16. TRANSFER BY LANDLORD—continued.**

before, but the property was not seized till after the whole of the arrears claimed had become due. C resisted A's claim on the ground, substantially, that the sum demanded included arrears which had accrued on the lands not occupied by him. Held that, as to the lands of which C had obtained the actual possession, there was such a privity between A and C as gave A a right to realize the amount of kist outstanding in respect of those lands. Held also that this right was not affected by failure to prove the execution of a muchalka by C to A, or by the omission to furnish C with a list of the property attached. *KAMAZA NAYAK v. RANGA RAU*

[1 Mad., 24]

220. ——— *Sale of zamindar's rights—Right of purchaser to rent.*—If, when a judgment-debtor's rights and interests in property are sold, the property is lawfully in the possession of tenants, the proper course is not to dispute their lawful possession and occupation, but to place the purchaser in a condition to receive from them the rents in the place of the judgment-debtor. *UNCOVERED SERVICE BANK v. PALMER* 2 N. W., 456

221. ——— *Purchaser of zamindari, Right of, to rent.*—Where a party purchases another's zamindari rights in an estate in which that other had created an under-tenure with a fixed rent, the circumstance that payment of rent on account of such tenure was suspended while the zamindari was in the hands of the former proprietor does not affect the rights of his successor or the fixity of the rent. *GUDDADHIE LALL v. RAM JHAN GUNDEREE* . . . 10 W. R., 212.

222. ——— *Suit for rent—Bengal Tenancy Act (VIII of 1885), ss. 72 and 73—Rule 3, Ch. I of the Rules made by the Local Government under cl. (2) of s. 189 of the Bengal Tenancy Act—Liability for rent on change of landlord—Notice of transfer—Transfer of patni right over a specific area, whether valid—Reg. VIII of 1819, ss. 3 and 6—Transfer of Property Act (IV of 1882), s. 6.*—Patni right over a specific area lying within a patni talukh is transferable. Sub-s. (1) of s. 72 of the Bengal Tenancy Act does not require that the notice therein contemplated should be given in any particular manner. *MADHUB RAM v. DOYAL CHAND GHOSE*

[I. L. R., 25 Cal., 445.
2 C. W. N., 108.]

223. ——— *Position of tenant-at-will paying rent and the purchaser.*—Where a party occupies land within a zamindari with the zamindar's permission as a tenant-at-will, on the terms of paying rent, a purchaser of the zamindari has a right to treat him as his tenant unless the zamindar has transferred his right, e.g., by granting a patni for the land to a third party. In a suit by such purchaser against such tenant, in which the third party intervened, the issue whether the zamindar transferred his rights to the plaintiff or had previously transferred them to the intervenor was

LANDLORD AND TENANT—continued
15 ALTERATION OF CONDITIONS OF
TENANCY—continued.

Rutton Bepary, I L R, 3 Calc, 696, distinguished.
GUNGA DHURSHIKAR v. ATIMUDDIN SHAH BISWAS
 [I L R., 8 Calc., 960]

S C GOVINDA CHUNDRA SIKDAR v. ATIMUDDIN SHAH BISWAS
 11 C. L. R., 281

208 ———— *Occupancy of homestead land—Tenancy, Determination of—The mere record of the name of a tenant, who is found*

such settlement *A* was recorded as tenant of the land at a stated rent.—*Held* that the Court was not bound to presume that the origin of *A*'s title was a grant to continue in permanent possession. *Proswano Coomaree Debea v. Rutton Bepary, I L R, 3 Calc, 696*, and *Addo Charan Dey v. Peter Das, 13 B L R, 17*, followed. **ARUT SAHOO v. PRANDHON PRKURA**
 I L R., 10 Calc., 503

209. ———— *Suit to compel tenants to clear lands of buildings and trees—Currenty of lease—Cause of action—Certain landlords' suits to compel their lessee's tenants to clear certain lands of*

LANDLORD AND TENANT—continued.
15 ALTERATION OF CONDITIONS OF
TENANCY—continued

Dyson, L. R, 1 H L. at p 170, and consequently the defendants had no equity against the plaintiff. **ONKARAPA v. SUBAJI PANDERANG SUBAJI PANDURANG v. ONKARAPA**
 I. L R., 15 Bom., 71

212.

Rese

Injury

applicability of the rule by occupation—Action of dwelling house on agricultural land—Amelior-

[I L R., 16 Mad., 407]

213 ———— *Law of landlord and tenant as to building by the tenant on the land—Acquiescence of lessor—Equitable estoppel preventing ejection—Onus of proof—A lessor is not restrained by any rule of equity from bringing a suit to evict a tenant the term of whose lease has expired, merely by reason of that tenant's having*

contracted that the right of tenancy should be changed into a right of permanent occupancy. Acquiescence by the lessor in this case was a legal inference to be drawn from such facts as were found. The onus of establishing sufficient cause for an equitable estoppel had not been discharged by the tenant in this instance. *Ramsden v. Dyson, L. R, 1 E & I, 4p, 129*, and s 108 of the Transfer of Property Act, 1882 referred to. **BENI RAM v. KUNDAN LAL**

[I L R., 31 All., 493 I L R., 23 I A., 58
 3 C W N, 503]

214 ———— *Erection of buildings by tenant on land—Acquiescence of landlord—*

211 ———— *Ejection suit—Tenant ex*

cow house, had been altered by the defendants and

the decree was varied by directing that the plaintiff should recover possession of the land and house, there

LANDLORD AND TENANT—continued.**17. TRANSFER BY TENANT—continued.**

234. ———— *N. W. P. Rent Act (XII of 1881), s. 9—Ex-proprietary tenant, power to sub-let—Right of occupancy.*—An ex-proprietary tenant can sub-let the whole or any part of his occupancy holding, and such a sub-letting is not forbidden by s. 9 of Act XII of 1881. *KHIALI RAM v. NATHU LAL* . . . I. L. R., 15 All., 219

235. ———— *N. W. P. Rent Act (XII of 1881), s. 9—Occupancy-tenant, power of, to sub-let—Perpetual lease by occupancy tenant.*—The effect of a perpetual lease made by an occupancy tenant of his occupancy holding to a person not a co-sharer in the right of occupancy considered. *MAHESH SINGH v. GANESH DUBE*
[I. L. R., 15 All., 231]

236. ———— *N. W. P. Rent Act (XII of 1881), s. 31—Lease of occupancy holding—Relinquishment of holding pending term of lease.*—Where an occupancy tenant grants a lease of land forming part of his occupancy holding for a term of years, he cannot during the subsistence of such term relinquish his holding to the zamindar so as to put an end to his lessee's rights under the lease. *Khiali Ram v. Nathu Lal*, I. L. R., 15 All., 219; *Hoolassee Ravi v. Porsulum Lal*, 3 N. W., 63; *Heeramonee v. Gangannarain Roy*, 10 W. R., 351; and *Nehalunissa v. Diunoo Lal Chowdry*, 13 W. R., 281, referred to *Sukru v. Tafazzul Husain Khan*, I. L. R., 16 All., 398, distinguished. *BADRI PRASAD v. SHRODHAN*
[I. L. R., 18 All., 354]

237. ———— *Bengal Tenancy Act (VIII of 1885), s. 85—Landlord and tenant—Sub-lease of a raiyati holding by a registered instrument for a period of more than nine years—Whether valid.*—A sub-lease of a holding by a raiyat without the consent of the landlord, though created by a registered instrument, is altogether void under s. 85 of the Bengal Tenancy Act. *SRIKANT MONDUL v. SAKHODA KANT MONDUL* . . . I. L. R., 28 Calc., 40

238. ———— *Transfer of tenancy—Yearly tenancy—Consent of landlord.*—A yearly tenancy cannot be transferred without the lessor's consent, and the fact that the lessee had had enjoyment under the pottah for a very long series of years does not alter the character of the interest originally created by the pottah. *JALILZEE SAHOO v. BHURWA DONG* . . . 8 W. R., 397

239. ———— *Consent of landlord—Purchase from tenant.*—The purchaser of a raiyati tenancy is bound to obtain the landlord's consent to the transfer of the tenancy without this being done, a purchaser's receipt of rent and holding certificate is void. *BHASKAR ANN GOLAM ALL* . . . 10 W. R., 97

240. ———— *Transfer of tenancy—Right of landlord to transfer of tenancy.*—Where a tenant's right to sub-let is not transferred, the landlord is not bound to accept any sub-letting, but he is bound to let the tenant sub-let the whole of the holding, if the tenant is entitled to do so. *MAHESH SINGH v. GANESH DUBE* . . . 15 All., 231

LANDLORD AND TENANT—continued.**17. TRANSFER BY TENANT—continued.**

right of possession as against the proprietors of the estate, and that the holder of the pottah from the tenant was a mere trespasser. *OMAR v. ARMOOT GURFOON* . . . 9 W. R., 425

241. ———— *Kurpha tenant—Transferable tenures.*—The jummi rights of a kurpha under-tenant are not transferable without the consent of the raiyat-landlord. *BONOMALI RAJADUR v. KOKLASH CHUNDER MOJOMDAR*
[I. L. R., 4 Calc., 135]

242. ———— *Transfer by tenant of mirasi rights—Jeknawaleym of transfer by landlord.*—The right of transfer of mirasi rights, although by name and commonly enjoyed by tenants in these provinces, is nevertheless in some places sanctioned by local usage. Where a person has made such a transfer without authority, it should nevertheless be enquired into whether or not the landlord has sanctioned such transfer by accepting the assignee as tenant and receipt of rent. *KOHARA v. DOORGA PERSHAD* . . . 2 N. W., 139

243. ———— *Suit for rent of transferable tenure—Possession of holder.*—The person into whose hands a transferable tenure comes is bound to pay rent to the landlord, unless kept out of possession and enjoyment by the fault of the landlord, and the landlord's right to claim rent from his tenant does not depend upon the fact of possession by the tenant. *GOBIND CHUNDER CHANDRA v. KANTO KANTO DEVI* . . . 14 W. R., 273

244. ———— *Liability for rent—Party in possession.*—A landlord seeking to recover rent is not bound to prove against any person who may have any latent beneficial right to the tenure in respect of which the rent has fallen due, but against that person only who may be found in possession thereof with a legal right. *TITECK CHUNDER CHUCKRABORTY v. GARGWONER* . . . 2 May, 364

245. ———— *Liability for rent—Registered tenant.*—When arrears of rent become due, a zamindar is not bound to look beyond the book for the party liable, except when he has recognized other persons as his tenants either by receipt of rent or in other ways. *ABDUL MOHAMMAD DAWA v. MOHAMMAD NABAIN DAWA* . . . 15 W. R., 264

246. ———— *Suit for rent—Action for rent—Action for rent—Action for rent.*—An action for rent does not lie against a person who is shown to be in possession of a tenancy which is written in the books of the landlord in the name of a different person, unless there has been a transfer, express or implied. *POHAR CHUNDER GHOSH v. BURHO MOHAMMAD DAWA* . . . 10 W. R., 273

247. ———— *Transfer of tenancy—Action for rent.*—Where a tenant's right to sub-let is not transferred, the landlord is not bound to accept any sub-letting, but he is bound to let the tenant sub-let the whole of the holding, if the tenant is entitled to do so. *MAHESH SINGH v. GANESH DUBE* . . . 15 All., 231

LANDLORD AND TENANT—continued**16 TRANSFER BY LANDLORD—continued**

material GOOROO PRASUNNO BANERJEE & SRE-
GOPAL PAL CHOWDHURY . . . 20 W. R. 99

224 ———— *Purchaser at
sale for arrears of revenue—Alteration in payment
of rent*—The purchasers of a zamindar's right by
having their shares separately recorded in the Collec-
tor's office under Act VI of 1859 do not acquire any
right to alter the position of tenants as regards the
manner in which rent is to be paid, so long as the
latter hold over after the expiry of a settlement
DELAUNY & KOFILOODDEEN . . . 25 W. R. 35

225 ———— *Suit by pur-
chaser of moiety of talukh for rent*—Where the
plaintiff, after purchasing from Sa moiety of a talukh
which had been previously let in ijara on a lump
sum to T, brought a suit under Act X of 1859
against the lessee to recover that portion of the
whole rental property accruing on the talukh pur-
chased, and the suit was dismissed on the ground that
the ijara kabuliat did not specify the proportion
of rent due upon the talukh it was held in a subse-
quent suit brought by the plaintiff . . .

226 ———— *Arrangement
between landlord and tenant binding on purchaser*
—A purchaser of land is bound by a contract between
his vendor and a tenant which is not a condition
of the sale . . .

227. ———— *Mortgagee after
foreclosure and tenant of mortgagor*—A mortgagee
who has foreclosed a mortgaged property is not bound
to pay the rent of the property to the tenant of the
mortgagor . . .

228 ———— *N-W P Rent
Act (XII of 1891), ss 7, 95 (1)—Determination of
rent by Revenue Court—Suit for arrears of rent as
so determined for period prior to such determina-
tion*—An application was made in the Revenue Court
under s 95 (1) of the N-W P Rent Act of 1891 . . .

LANDLORD AND TENANT—continued**16 TRANSFER BY LANDLORD—continued.**

the Revenue Court's order *Held* by the Full Bench
that the plaintiff was entitled to recover arrears
of rent for the years in suit at the amount determined
by the Revenue Court . . .

17 TRANSFER BY TENANT

229 ———— *Right to sub-let—Tenant
with permanent right of occupation*—A tenant who
has a permanent right to the occupancy of land . . .

230 ———— *Limit of power
—Under-lease specifying no term*—A lessee cannot . . .

231 ———— *Limit of power* . . .

232 ———— *Sub lease—
Position of sub tenant—Privity of contract—Eject-
ment—Notice to quit—Bombay Land Revenue
Code (Bombay Act V of 1879), s 84*—A sub lease . . .

233 ———— *Sub-letting—
Sub-lessee's rights and liabilities* . . .

LANDLORD AND TENANT—continued.**17. TRANSFER BY TENANT—continued.**

tenant-at-will. *Held* that *A* was bound, under the terms of his contract, to pay the rent for as many years as the lease had to run to his lessor, or to the person who represented his lessor. *RUSHTON v. ATKINSON* 11 W. R., 485

260. ———— *Liability for rent accruing before tenant's possession—Liability of transferee of lease for rent.*—Except under special circumstances, which the plaintiff must prove, a tenant-defendant cannot be held liable for the rent which has accrued due prior to his taking possession. Hence if *A* leases land to *B*, who transfers the lease to *C*, and *C* mortgages to *D*, who afterwards forecloses his mortgage and takes possession of the demised premises, *D* cannot be held liable for any rent which has accrued due prior to his taking possession. *MACNAGHTEN v. LALLA MEWA LALL*

[3 C. L. R., 285

261. ———— *Non-registration of tenure—Recognition of transfer of tenure.*—A patnidar is not bound to recognize any purchaser by private sale as his dar-patnidar until he registers his name in the zamindar's *serishta*, and any proceeding held against the old dar-patnidar for the recovery of arrears of rent without making the purchaser a party to it is perfectly legal. *BISSOMOYEE DOSSEE v. MACKINTOSH* 2 Hay, 14

262. ———— *Transfer of permanent hereditary tenure—Forfeiture—Sarbarakari tenure.*—A zamindar is not bound to recognize the transfer of a permanent hereditary tenure effected without his consent, and cannot be compelled to register such transfer in his *serishta*; but the fact of such improper transfer does not deprive the old sarbarakar of his rights, or entitle the zamindar to set khas possession. *KASHEENATH PUNEE v. LUKHMOON PERSHAD PATNAIK* . 19 W. R., 99

263. ———— *Transfer defeating right of re-entry.*—Even where a lessee's interest is transferable, the landlord is not obliged to recognize a transfer, if the effect of so doing would be to defeat his own right of re-entry. *NUND KISHORE SINGH v. ISMED KOOR* 20 W. R., 189

264. ———— *Liability for rent—Registration of tenant—Transfer without landlord's knowledge.*—Where a landlord registers a new tenant with his express or implied consent in the place of the old tenant, the new tenant becomes for the future as much personally liable for the rent as the old tenant was; and this personal liability continues, notwithstanding a fresh transfer or devolution of the tenure, unless proper steps are taken to apprise the landlord of the change and to have it registered in his *serishta*. *DWARAKA NATH MITTAL v. NOBONGO MUNJOBI DASSI* . 7 C. L. R., 233

265. ———— *Acknowledgment of tenancy—Registration of transfer—Deposit of rent.*—The mere deposit of rent in the Collector's office by the purchaser of an under-tenure in his own name and that of the registered tenant is not sufficient notice to the zamindar of such purchase; nor is

LANDLORD AND TENANT—continued.**17. TRANSFER BY TENANT—continued.**

the mere acceptance by the zamindar of rent so paid an acknowledgment on his part of the purchaser as his under-tenant, but it is otherwise when there is acceptance with notice, notwithstanding that the transfer has not been registered. *MRITUNJAYA SIRCAR v. GOPAL CHANDRA SIRCAR*

[2 B. L. R., A. C., 131

S. C. MRITUNJOY SIRCAR v. GOPAL CHUNDR SIRCAR 10 W. R., 466

266. ———— *Transfer by registered tenant—Sale in execution of decree—Receipt of rent—Acknowledgment of tenancy—Bengal Act VIII of 1865, s. 16.*—The plaintiffs were shareholders with one *B* in a tenure, of which *B* was the registered tenant, but of which he had assigned part to the plaintiffs without the consent of the zamindar. In execution of a decree against *B* for arrears of rent, the plaintiffs' portion was sold and purchased by the defendant. In a suit by the plaintiffs to set aside the sale and recover their property,—*Held* they were pecuniarily liable for the rent with *B*, unless the zamindar had made a separate agreement with them; that the whole tenure was rightly seized and sold in execution of the decree; and that the taking of the rent from them by the zamindar was no such recognition as to bind him or create a valid incumbrance under s. 16, Bengal Act VIII of 1865. *SRINATH CHUCKERBUTTY v. SRIMANTO LASHKAR*

[8 B. L. R., 240 note; 10 W. R., 467

267. ———— *Without consent of zamindar—Right of zamindar to sell tenure for arrears of rent—Recognition of transferee.*—A tenant cannot, by merely alienating his tenure, deprive the zamindar of the right which he would otherwise have to sell it in execution of a decree for arrears of rent. A zamindar can sell the tenure in the hands of the transferee, not being one of the judgment-debtors, if he does so with reasonable promptness: provided he has not done anything to recognize the transfer. Where a zamindar makes a transferee a party to a suit for rent and accepts a decree against him jointly with other persons, he must be held to have recognized the transferee as a tenant, although the latter's name may not have been entered as such in the zamindar's book. *RAVI KISHORE ACHARYA CHOWDHURY v. KRISHNO MOHTY DEBTA*

[23 W. R., 106

268. ———— *Liability for rent—Non-registration of tenure.*—*A*, the leasee of a transferable tenure, transferred his interest to *B*, but after the transfer the name of *A* remained as registered tenant. Subsequently the zamindar brought a suit against *A* for arrears of rent which accrued due partly before and partly after the purchase, and obtained a decree for the sale of the tenure. *Held* that the decree might be executed against the tenure, though the latter was in *B*'s possession before it was passed, it not appearing that the zamindar had knowledge of the transfer before the date of the decree. *WOONA CHUNY CHATTERJEE v. KADAMBEI DABER* 3 C. L. R., 140

LANDLORD AND TENANT—continued

17 TRANSFER BY TENANT—continued

exempted from their responsibility to pay the rent
MOITEE ROY & MEHJAN 20 W R., 443

SUROOP CHUNDER MITTER & DHONAYE BISWAS
 [23 W R., 103]

248 ———— *Transfer of*
raiyat jote—Unregistered occupier—Person in
possession—In the case of transfer of a mere raiyat s
jote the person in possession is liable for the rent
whether he is registered or not **GUYGA RAM SIKDAR**
& BIRESUR BANERJEE 6 W R., Act X, 32

MISSLEBACK & LUCHMEER NARAIN
 [17 W R., 504]

249 ———— *Suit for rent—*
Possession—Registration of tenants—A suit for
rent against several parties is maintainable against
such of them as are shown to be in possession as ten
ants whether they are registered or not **JEBAWUT**
CONISSA KHANUM & RAM CHUNDER DOSS
 [9 W R., Act X, 38]

250 ———— *Non regis*
tration of transfer—When a tenure is not transfer

251 ———— *Non registration*
of transfer—Non registration in the zamindar's
serikhta does not invalidate the sale of a tenure
BHARUT ROY & GANGANARAY MOHAPUTTER
 [14 W R., 211]

252 ———— *Unregistered*
transferee—The unregistered transferee of a trans
ferable tenure cannot be treated by the zamindar as a
trespasser but as against the zamindar who has
evicted him has a right to be restored to possess on
NOOREN KISHEN MOOKERJEE & SHIB PERSHAD
PATTUCK 8 W R., 96

Upheld on review 9 W R., 161

253 ———— *Unregistered*
transferee—Per KEMP J—On the death of a regis
tered patnidar a zamindar is not bound to recognize
any one as his tenant without registration in his
serikhta nor is he prevented from putting in a sez
wal to collect the rents until a declaration of the
rights of the deceased patnidar's heirs **RAM CHURN**
BANDOPADHYA & DROPO MOYEE DOSSEE
 [17 W R., 122]

92A

LANDLORD AND TENANT—continued

17 TRANSFER BY TENANT—continued

vendee of a saleable under-tenure as tenant notwith-
 standing that no mutation of names has taken place
 in his books **MEAH JAN & KURUNAMATI DEBI**
 [8 B L R., 1]

255 ———— *Act X of 1939*
27—Division of rent or tenure—The lessor is not
bound to recognize the title of any one except
the person with whom he deals whatever that title
may be as between the lessee and the members of his
family **UPENDRA MOHUN TAGORE & THANDA DAS**
 [3 B L R., A C, 349]

S C WOOPENDRO MOHUN TAGORE & THANDA
DOSSEA 12 W R., 263

SADHAN CHANDRA BOSE & GURU CHARAN BOSE
 [8 B L R., 6 note 15 W R., 93]

256 ———— *Liability for*
rent—Mortgages in possession—Transfer of Pro
perty Act (11 of 1952) ss 65 76—Where the sub
ject of a mortgage is leasehold property, and the
mortgagee is put into possession under circumstances
which amount to an assignment or transfer of the

being liable for the rent **KANNAR LALL DEBT &**
NISTORINY DOSSEE I L R., 10 Calo, 443

257 ———— *Purchaser of*
 khas mehal—Registration of tenures—The pur
chaser by
usual
co
the
 original tenants for their arrears of rent **HURO**
MOHUN MOOKERJEE & RAM COOMAR MITTER
 [1 W R., 225]

It is otherwise if they are registered **HURO**
MOHUN MOOKERJEE & GOLUCK MUNDUL
 [1 W R., 351]

SUTTO CHURN GHOSAL & OBBHOY NUND DOSS
 [2 W R., Act X, 31]

258 ———— *Failure to ob*
tain registry of name—Purchaser Position of
Where the purchaser of a patni talukh fails to ob
tain registry of his name in the zamindar's books a
third party who claims to derive his title from the
purchaser's vendor has no right on the ground of
such failure to treat the purchaser as his tenant
RAM NARAIN DOSS & TWEEDIE 12 W R., 161

259 ———— *Right of pur*
chaser—Under lessees—A agreed to take at a st
ipulated rent a portion of the property leased to B
for the remainder of B's lease Almost immediately
after B surrendered his lease to the landlord (S)
who gave a fresh lease to R to whom he afterwards
sold all his rights A continued in occupation some
time and on relinquishing was asked for rent at the
stipulated rates A denied liability alleging that
he had made no agreement with R but from the
time of R's purchase had held under him as a

LANDLORD AND TENANT—continued.

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of India it was competent for the tenant to rid himself of his liability by assignment or at any rate by assignment and notice thereof to his landlord. *Held* that, if there was such a common law in India enabling the tenant to put an end to his liability by transfer and notice, it did not at all events extend to leases of a non-agricultural character; and that s. 108, cl. (j), of the Transfer of Property Act, which governed the case, must be construed without reading it as governed by, or interpreted with reference to, any such principle; and that, after a transfer by the lessee and notice thereof to the landlord, the liability of the lessee would not cease, merely at his pleasure, without any act or consent on the part of the landlord. *SASI BHUSHAN RAHA v. TABA JAL SINGH DEO* I. L. R., 22 Calc., 494

277. ———— *Bengal Tenancy Act (VIII of 1885), ss. 18 and 50—Presumption—Occupancy raiyats—Raiyats holding at fixed rent—Incidents of tenancy—Transferability of tenure—Alienation of part of a tenure—Suit for khas possession and for declaration that alienation was invalid—Form of decree.*—In a suit brought in 1893 for a declaration that a holding was not transferable, and that the alienation of a portion thereof was invalid, and also for khas possession of the land on the ground of such alienation, it was found that the rate of rent payable for the holding had never been changed since 1831, and that there was nothing to rebut the presumption raised by s. 50 of the Bengal Tenancy Act (VIII of 1885). *Held* (1) that the alienation did not work a forfeiture, and the plaintiffs were not entitled to khas possession, but they were entitled to the declaration that the alienation was not binding upon them; (2) that the presumption created by s. 50 does not operate to convert an occupancy raiyat into a raiyat holding at fixed rates, nor does it render the tenancy subject to the incidents of a holding at fixed rates as prescribed by s. 18 of the Act. *KANSI DAS alias RAGHU NATH DAS v. JAGDIP NARAIN CHOWDHRY* I. L. R., 24 Calc., 152

Dissented from in *DALHIMI GOLAB KOER v. BALLA KURMI* I. L. R., 25 Calc., 744

278. ———— *Mulgeni lease—Alienation by mulgenidar—Alienation contrary to the terms of the lease—Absence of any clause as to re-entry—Suit by mulgar for possession.*—In the absence of any clause for re-entry in the event of alienation by the mulgenidar (permanent tenant) contrary to the terms of the lease, the mulgar (landlord) cannot treat the alienation as void and recover possession from the alienee. *NARAYAN DASAPPA v. ALI SAIBA* I. L. R., 18 Bom., 603

279. ———— *N.-W. P. Rent Act (XII of 1881), s. 9—Mortgage by occupancy-tenant—Surrender of holding by heirs of mortgagor—Suit on mortgage—Sale and purchase by mortgagee—Subsequent suit by zamindar for recovery of occupancy-holding.*—A, an occupancy-tenant to whom the second and third paragraphs of s. 9 of Act XII of 1881 applied, gave a simple mortgage of his

LANDLORD AND TENANT—continued.

17. TRANSFER BY TENANT—continued.

occupancy-holding to one S. During the continuance of the mortgage, A died and his sons surrendered the occupancy-holding to the zamindar. S then brought a suit for sale on his mortgage, obtained a decree, had the mortgaged property sold, and purchased it himself. On suit by the zamindar, who had not been made a party to any of the previous proceedings, against S for recovery of the holding, it was held that S took nothing by his purchase under the decree obtained as above described, and that the zamindar was entitled to recover. *SUKRU v. TAPAZUL HUSSAIN KHAN* I. L. R., 16 All., 398

280. ———— *Alienation contrary to terms of lease—Absence of any clause as to re-entry—Suit for ejectment—Forfeiture.*—A clause in a lease whereby the lessee covenanted not to alienate, unaccompanied by any clause for re-entry upon breach of the covenant, held to be a covenant merely and not a condition, and a suit for ejectment brought by the lessor was dismissed. *Narayan Dasappa v. Ali Saiba*, I. L. R., 18 Bom., 603, followed. *MADAR SAHEB v. SANNABAWA GAJRAJ SHAH* I. L. R., 21 Bom., 195

281. ———— *Transfer by tenant without consent of landlord—Original tenant remaining in possession as sub-tenant of the transferee—Abandonment of tenure—Liability to ejectment.*—Where the defendants had purchased the rights of the original tenants of certain jote lands, without obtaining the consent of the landlord to the transfer of the tenures, and the original tenants had remained in possession as sub-tenants of the transferees,—*Held* that the principle laid down in *Kabil Sardar v. Chunder Nath Nag Chowdhry*, I. L. R., 20 Calc., 590, was not applicable, and that the landlord was entitled to a decree for ejectment against the transferees. *KALLINATH CHAKRAVARTI v. UPENDRA CHUNDER CHOWDHRY* I. L. R., 24 Calc., 212

282. ———— *Transfer by tenant of land on which he has by permission of zamindar built a house for his own occupation—Rights of zamindars in land forming part of the abadi—Customary law of the North-Western Provinces.*—According to the general custom prevalent in the North-Western Provinces, a person, agriculturist or agricultural tenant, who is allowed by a zamindar to build a house for his occupation in the abadi, obtains, if there is no special contract to the contrary, a mere right to use that house for himself and his family so long as he maintains the house, that is, prevents it falling down, and so long as he does not abandon the house by leaving the village. As such occupier of a house in the abadi occupying under the zamindar, he has, unless he has obtained by special grant from the zamindar an interest which he can sell, no interest which he can sell by private sale or which can be sold in execution of a decree against him, except his interest in the timber, roofing, and wood-work of the house. *Narain Prasad v. Dammar*, *Weekly Notes*, All., 1888, p. 125, and *Chajju Singh v. Kanha*, *Weekly Notes*, All., 1881, p. 114, referred to. *GIRDHARJI MAHARAJ v. CHOTE LAL* I. L. R., 20 All., 248

LANDLORD AND TENANT—continued**17 TRANSFER BY TENANT—continued**

See **NOBIN CHUNDER SEW CHOWDHURY v NOBIN CHUNDER CHUCKERBUTTY** . . . 22 W. R., 46

269. ——— *Position of purchaser—Act X of 1859, s 21*—A decree against a vendor obtained before a Collector cancelling a pottah of a jote which has been sold is not binding on the purchaser of the jote, if the purchase was made before the transfer of the tenure to him took

270 ——— *Suit for rent—Liability of tenure for rent—Rent due by former tenant*—A decree for rent obtained by a land

such tenure under his decree He cannot make a tenant personally liable for rent which accrued due

another **RAM BHARY BUNDOFADHTA v PEARLY MOHUN MOOKERJEE** . . . L. L. R., 4 Calc., 346
[3 C. L. R., 118]

271. ——— *Enhancement of rent, Suit for—Transferable tenure—Mutation of names—Tenant who has transferred his holding, Liability of, for rent*—The main object of a suit for enhancement is to have the contract between the landlord and tenant as regards the rate of rent re-adjusted. In a suit for enhancement it was found that the defendant had prior to institution, sold his holding which by custom was transferable without the consent of the landlord, to a third party. There had been no mutation of names, or payment of a

KHAN v AHMED ALI . . . L. L. R., 14 Calc., 795

272 ——— *Mortgage of occupancy holding—Act inconsistent with the purpose for which the land was let*—Suit to eject mortgagee in possession—N. W. P. Rent Act (XII of 1861), ss 9 and 93—A mortgage of his holding by an occupancy tenant under which the mortgagee

LANDLORD AND TENANT—continued**17 TRANSFER BY TENANT—continued**

the making of a tank or the altering the character of the land, as, for instance, turning it from agricultural land to building land. But a mortgage with possession, whether the possession is given at the time of the granting of the mortgage, or is obtained later by virtue of the mortgage, is a transfer within the prohibition of s 9 of the N. W. P. Rent Act. **MADHO LAL v SHEO PRASAD MISRA**

[L. L. R., 12 All., 419]

273 ——— *Transfer of portion of mokurari tenure—Bengal Tenancy Act (VIII of 1885), ss 17, 18, and 88—Rights of purchaser or transferee of tenure—Right of suit*—There is nothing in s 88 of the Bengal Tenancy Act to prevent a person who has purchased a share in a mokurari holding from bringing a suit for a declaration of his right to that share and for possession of the same after setting aside a sale held in execution of a decree for rent to which he was not made a party. Ss. 17 and 18 of the Bengal Tenancy Act recognize the transfer of a share of a holding and enable the transferee to be regarded as one of the tenants in respect of the holding. **MOHESH CHUNDER GHOSH v SARODA PRASAD SINGH**

[L. L. R., 21 Calc., 433]

274 ——— *Transfer of Property Act (IV of 1882), s 108, cl (3)—Transfer by lessee—Lessor's right to sue both lessee and his transferee*—The provision in s 180 of the Transfer of Property Act that a lessee may transfer, absolutely or by way of mortgage or sub-lease, the

275 ——— *Transfer of Property Act (IV of 1882), s 108—Transferability of agricultural and non agricultural holding—Law before the passing of the Transfer of Property Act*—Before the Transfer of Property Act was passed, there was no distinction drawn between agri-

276 ——— *Transfer of Property Act (IV of 1882), s 108, cl (3)—Liability of a lessee for rent after transfer—Leases of non agricultural character*—To suits brought by a landlord against his lessee for rent based upon kabuliats the leases being of a non-agricultural character, an assignee of the lessee was made a party defendant on his own application. It was contended on behalf of the lessee that under the common law

LANDLORD AND TENANT—continued.**18. ACCRETION TO TENURE—continued.**

jotedar with a right of occupancy has a right to lands which accrete to his jote, and the zamindar cannot take them away and settle them with other parties. **ATTIMOOLLAH v. SAHEBOOLLAH**

[15 W. R., 149]

295. — Joto tenure—Beng. Reg. XI of 1825, s. 4, cl. (1)—Occupancy right—Raiyat.—A raiyat who has a right of occupancy is entitled to the benefit of s. 4, cl. (1), of Regulation XI of 1825. **Gobind Monce Debia v. Dinobundhoo Shaha**, 15 W. R., 87; **Attimoollah v. Saheboollah**, 15 W. R., 149; and **Dhagabat Prasad Singh v. Durg Bijai Singh**, 8 B. L. R., 73; 16 W. R., 95, followed. **Finlay, Muir & Co. v. Gopee Kristo Gossamer**, 21 W. R., 404, not followed. **GOURNARI KAMURTO v. BHOOLA KAMURTO** . I. L. R., 21 Cal., 233

296. — Rent of accreted land—Beng. Reg. XI of 1825, s. 4, cl. 1—Liability to increased rent.—When the area of land held by a tenant under a permanent tenure has been increased by accretion, the tenant becomes subject to pay an increased rent on account of the land gained by accretion, on the conditions laid down in Regulation XI of 1825, s. 4, cl. 1. **RAMNIDHAR MANJHI v. PARBUTTY DASSEE** . I. L. R., 5 Cal., 823

S. C. SHOROSOTTI DOSSEE v. PARBUTTI DOSSEE
[6 C. L. R., 362]

BROJENDRA COOMAR BHOOICK v. WOOPENDRA NARAIN SINGH . I. L. R., 8 Cal., 708

See **BAKRANATH MANDAL v. BINODE RAM SEIN**
[1 B. L. R., F. B., 25; 10 W. R., F. B., 33]

HURROSOONDEREE DOSSEE v. GOPI SOONDEREE DOSSEE . 10 C. L. R., 559

297. — Lands formed by the drying-up of a beel or marsh—Trespasser—Encroachment.—Although where a tenant encroaches upon any land of his landlord outside of his tenure, it is open to the landlord to treat him as tenant and not as a trespasser and the tenant has no right to compel the landlord to treat him as a tenant, yet it does not follow that because the landlord has this option he can treat the tenant as trespasser at any time after having exercised his option in treating him as a tenant for some time. The principal defendants held a holding under the plaintiffs and their co-sharers; subsequent to the creation of the original holding defendants took possession of certain lands by gradual encroachment; plaintiffs brought a suit for recovery of their share of the encroached lands or for assessment of rent and made their co-sharers parties. *Held* that the plaintiff not having treated the defendants as trespassers from the beginning the defendants must be treated as tenants of those lands apart from their tenancy in respect of their holding. **KHONDAKAR ABDUL HAMID v. MOHINI KANT SAHA**

[4 C. W. N., 508]

298. — Accretion to parent estate, Assessment of rent in respect of—Reg. XI of 1845, s. 2, cl. (1)—Act XI of 1855, s. 1—Reg. VII of 1822—Act IX of 1847—Act XXXI

LANDLORD AND TENANT—continued.**18. ACCRETION TO TENURE—continued;**

of 1859—Bengal Tenancy Act (VIII of 1885), s. 52.—In a suit brought by the talukhdar of a certain mouzah against the dar-talukhdar for a declaration that he was entitled to get rent at a certain rate annually, also for arrears of rent at that rate, and in the alternative for compensation for use and occupation of the disputed land which was an accretion to the said mouzah, and in respect of which a settlement was made with him by Government treating it as a separate estate, the defence (*inter alia*) was that the suit was not maintainable unless a rental was assessed in the first instance, and that no arrears of rent could be claimed, as there was no relationship of landlord and tenant between the parties. *Held* the landlord could not treat it as a separate tenure altogether; that the increment was to be regarded as part of the parent estate, and treating it as part and parcel of the parent estate he was entitled to get assessment of rent on the disputed land; but he was not entitled in the suit to back rent or compensation for use and occupation. **ASSANULLAH BAHADUR v. MOHINI MOHAN DAS** . I. L. R., 28 Cal., 739

299. — Lessee under Government—Right of lessee to accretions to his tenure.—The lessee of a mouzah ordinarily being in the position of zamindars, a lessee holding lands from Government, in the absence of any stipulation in his lease to the contrary, is entitled to the benefit of all accretions formed upon such lands during the term of his holding and may sue the occupants for a fair and equitable rent. **MUTURA KANT SHAHA v. MEJAN MUNDUL** . 5 C. L. R., 192

300. — Land in excess of tenure—Accretions to parent tenure—Rate of rent—Beng. Reg. XI of 1825, s. 4, cl. 1.—In a suit for arrears of rent, it appeared that the defendant had, in 1260 (1853), executed a kabuliati, in which the boundaries of the land were given and the rate of rent fixed, and which provided that the land might be measured after 1261 (1854). In 1281 (1874), a measurement was made, and it was found that some land had accreted; and the plaintiff now sued for rent for the accreted land, at rates varying with its nature and quality. *Held* that the accreted land should be governed by the terms and conditions applicable to the parent tenure, and that the same rent was payable for it as for the land included in the kabuliati. The meaning of Regulation XI of 1825, s. 4, cl. 1, is, that the incidents of the original tenure attach to the increment. **GOLAM ALI v. KALI KRISHNA THAKUR**

[I. L. R., 7 Cal., 479; 8 C. L. R., 517]

301. — Submergence of occupancy-tenant's land—Diluvion—Liability for rent—Resumption by landlord—Custom—Act XII of 1881 (N. W. P. Rent Act), ss. 18, 31, 34 (b), 95 (n).—A landholder, alleging that by local custom when land was submerged, and the tenant ceased to pay rent for the same, his right to it abated, and when the land re-appeared the landholder was entitled to possession thereof; that certain land belonging to him had been submerged and the occupancy-tenant thereof had ceased to pay rent for it; and that

LANDLORD AND TENANT—continued

17 TRANSFER BY TENANT—concluded

283 ————— Payment, into

in such of the source from which the judgment-debtor had procured it Where a tenant transfers his

18 ACCRETION TO TENURE

284. ————— Right to increment to tenure.—The law gives an increment to a tenant or under tenant in possession, without reference to the nature of his title *NARAIN DOSS BEPARY v SOOSUL BEPARY* 1 W R, 113

285 ————— Tenant at-will

Contra FINLAY, MUIR & Co v GOREK KRISTO GOSSAMEZ 24 W. R., 404

KISHAY DRUN AUDHICAREE v CAMPBELL

[W. R., F. B., 22-1 Ind Jur, O S, 79

287 ————— Terms of holding accreted lands—*Beng Reg XI of 1925—Assessment of*

288 ————— *Beng Reg XI of 1925 s 4 cl 1—Held that under s 4 cl 1, Regulation XI of 1925 tenants have a right to the land accreted to their holding and if the tenant has acquired a right of occupancy in his original holding, he would enjoy a similar right in the alluvial land,*

LANDLORD AND TENANT—continued

18. ACCRETION TO TENURE—continued

although he may not establish that he has held such alluvial land for twelve years. *OODIT RAY v RAM-GOSIND SINGH* 2 Agra, Pt. II, 208

289 ————— Land accreted to musafi tenure—*Beng Reg XI of 1925, s 4, cl 1—Where alluvial land has been formed in front of and contiguous to an old musafi which had been resumed and settled with the musafidars,—Held that, in the absence of any custom to the contrary, the*

[3 Agra, 152

290. ————— Where lands

SHAKA

15 W. R., 87

291 ————— *Beng Reg XI of 1925 s 4 cl 1—Cl 1, s 4 Regulation XI of 1925, refers only to under tenants intermediate between the zamindar and the rayat and to khooth kasht or other rayats who possess some permanent interest in their lands, and not to tenants from year to year ZUHEERROOZEY PAIKAR v CAMPBELL* [4 W. R., 57

292 ————— *Beng Reg XI of 1925, s 4, cl 1.—Cl 1 s 4 Regulation XI of 1925 provides that the*

(HUNDER DUTT v LANTORY 6 W R, Act X, 48

293 ————— Accretion to zimma tenure—*Beng Reg XI of 1925—Cl 1 s 4 Regulation XI of 1925, and s 22, Act X of 1859, will not allow a suit for the assessment of lands accreted to a zimma tenure, and holders like the zimmadar, in a case of this nature, are not liable under s 18, Act X of 1859 for additional rent for chur land,*

294 ————— Accretion to holding of mirasi jotedar—*Right of occupancy.—A miras*

LANDLORD AND TENANT—continued.

19. ACCRETION TO TENURE—concluded.

by means of special works and special labour, unculturable into culturable land, is entitled to hold at exceptionally low rates. *Chowpatty Khan v. Govt JANA* . . . 2 W. R., Act X, 40

19. RIGHT TO CROPS.

311. ——— Right to crops on death of occupancy raiyat. *Legal representatives, Right of, against zamindar.* A zamindar cannot lay claim to the crops on the ground at the raiyat's death, even supposing that the occupancy right lapsed in his favour, as it forms a part of the property belonging to the deceased, and passes to his legal representatives. *Doodha Prashad v. Dooder Prashad* . . . [3 Agrs, 183

312. ——— Right to crops when stored—*Bin-jile tenure.* When lands are held under a bin-jile tenure and the tenants are bound by agreement to cut and store the crops on their landlord's chuck, where it is afterwards to be divided, the dominion over the crops till division is in the landlord. *Hosro Narain v. Shrotha Kestor Berau* . . . I. L. R., 4 Cal., 890; 4 C. L. R., 32

313. ——— Standing crops—*Effect of order of ejectment under Bengal Rent Act, 1869.* The effect of an order of ejectment under the Bengal Rent Act is to dispossess the raiyat not only of the land, but also of the crop standing thereon. IN THE MATTER OF DEBIAN MAHTON v. WAJID HOSEIN . . . [I. L. R., 5 Cal., 135

20. PROPERTY IN TREES AND WOOD ON LAND.

314. ——— Right to trees for timber—*Right to cut down trees.* A zamindar has a right in the trees grown on the land by the tenant, and although the tenant has a right to enjoy all the benefits of the growing timber during his occupancy, he has no power to cut the trees down and convert the timber to his own use. The zamindar may sue to have his title in the growing trees declared. *Abdool Rohoman v. Dataram Bashee* . . . [W. R., 1864, 367

315. ——— Right to trees planted by raiyat—*Death of raiyat.* Held that the plaintiffs, the owners of the lands on which trees stand, are, in default of heirs, entitled to proprietary possession of trees as "lawarisee" which had been planted by the deceased raiyat. *Bhairow Deen v. Mookta Ram* . . . 1 Agrs, 13

316. ——— Right to trees already planted—*Lease in perpetuity.* Where a lease is granted in perpetuity at a fixed rent and the lessor reserves no reversionary interest in the land or in the trees growing on it, the lessees are entitled to the ownership of the trees. *Sharoda Soondari Debia v. Gonde Sheik* . . . 10 W. R., 419

317. ——— Assessment in respect of trees—*Profits realized by erection of huts for*

LANDLORD AND TENANT—continued.

20. PROPERTY IN TREES AND WOOD ON LAND—continued.

pilgrims.—A landlord is entitled to assessment in respect of trees as being the produce of the soil, but not in respect of profits realized by the use of stalls or huts erected by the tenant for the use of pilgrims frequenting a fair annually held on the land in honour of an idol which the defendant has there. *Kewajhar Chyemen Kajah v. Jan Aily Chowdhury* . . . 1 W. R., 46

318. ——— Evidence of property in trees—*Proof of acts of ownership.*—A person's title or property in a tree may be proved by showing that the tree grows on his land, without proof of any act of ownership over the tree. *Chuttoo Bhooj Tiwari v. Vilant Ali Khan* . . . [W. R., 1864, 223

319. ——— Trees planted by lessee—*Right to growing trees under grant of homestead or waste land.*—A peshchahi sanad, or grant at a quit rent of homestead and waste land, being construed to assign a heritable right in a tract of land capable of yielding fruits by virtue of which the holder, during the continuance of his right, possessed absolutely the entire use and fruits thereof, Held that the lessor or grantor had no more right to the trees planted by the lessee than he had to the crops sown by him. *Goluck Rana v. Nuro Soondere Dossee* . . . 21 W. R., 344

320. ——— Presumption as to ownership of trees—*Suit for possession of tree—Presumption in favour of lessee.*—In a suit to recover possession of a tree and of its produce, where defendant was admitted to be plaintiff's tenant as to the land on which the tree stood, Held that the tree was rightly presumed to be included in the lease, and that it was for the plaintiff to establish that he was entitled to remain in possession of the tree notwithstanding the lease. Held that the fact of a part of defendant's allegation—viz., that the tree had been planted by his ancestor—having proved untrue, did not entitle plaintiff to a decree. *Mahomed Ali v. Bolakee Bhuggut* . . . 24 W. R., 330

321. ——— Right of tenant to remove trees—*Determination of tenancy—Purchaser of rights of tenant after expiry of tenure.*—Held that trees accede to the soil and pass to the landholder with the land on the termination of a tenancy, and unless the tenant uses, during the term of his tenancy, his privilege, where he has it, of removing the trees, he cannot do so afterwards; he would then be deemed a trespasser. Held also that, where a tenant has been ejected in the execution of the decree of a Revenue Court for arrears of rent from the land forming his holding, his tenancy then terminates, and with it all right in the trees standing on such land or power of dealing with them. A person, therefore, who purchases the rights and interests of a tenant after his ejectment in the execution of such a decree, cannot maintain a suit for the possession of the trees standing on the tenant's holding. *Ram Baran Ram v. Salig Ram Singh* . . . I. L. R., 2 All., 896

LANDLORD AND TENANT—continued.**18 ACCRETION TO TENURE—continued**

such land had reappeared and had come into his possession under such custom,—sued such tenant in the Civil Court for a declaration of his right to the possession of it. *Held* that inasmuch as ss 18

302 ——— *Suit for increased rent for lands found in excess on measurement*—In a suit to recover a kabulat at enhanced rates for excess lands where defendant filed a pottah on which were endorsed the numbers of certain daghs of a measurement made by the zamindar, and com

with regard to the land covered by the pottah, that defendant was entitled to hold the whole of the lands comprised within the daghs notwithstanding that a recent measurement showed a greater extent of area than had been formally ascertained. **MOSES HUDDIN JOWADAR v SANDES** 12 W. R., 439

RASHUM DEBBER v. BISSONATH SIECAR
[8 W. R., Act X, 57]

DAVID v RAM DHUN CHATTERJEE
[8 W. R., Act X, 97]

RAJMOHUN MITTER v GOOROO CHURN ATCH
[8 W. R., Act X, 106]

303 ——— *Land held in excess of tenure*—*Miras, istemrari pottah*—*Right to enhance rent*—Where a mirasi istemrari pottah had been granted by a patnidar whose patni had been created while the mehal was under temporary settlement and who had to pay a higher rent to the zamindar when the latter obtained a permanent settlement from Government at a higher jama it was held that the fact of the patnidar having to pay a higher rent to the superior holder did not, under the circumstances, warrant his raising his lessee's rent. *Where a patni is a*

304 ——— *Rate of rent assessable for*—In respect to excess area it was

305 ——— *Suit for rent*—*Encroachment*—A, the holder of an independent

LANDLORD AND TENANT—continued**18 ACCRETION TO TENURE—continued.**

istemrari tenure lying in B's zamindari let it to C, who, under cover of his lease, encroached upon the zamindari lands. *Held* that there was no implied contract of tenancy between C and B, and B could not sue C for rents on account of the excess lands. **JAYABAYAN SINGH v MATILAL JHA**

[1 B. L. R., A. C. 21]

306 ——— *Encroachment by tenant, Presumption of English law as to*—The presumption of English law as to encroachments made by a tenant during his tenancy upon the adjoining lands of his landlord is that the lands so encroached upon are added to the tenure and form part thereof for the benefit of the tenant so long as the original holding continues and afterwards for the benefit of the landlord unless it clearly appeared by some act done at the time that the tenant made the encroachment for his own benefit. Where lands encroached upon have been added to the tenure, the tenant, if his tenancy is permanent, or he has a right of occupancy, cannot be ejected from them while the tenure lasts; but when rent is re-adjusted these lands may be brought into the calculation. **GOOROO DOSS ROY v ISSUR CHUNDER DOSE** 22 W. R., 246

307 ——— *Fazendari tenure—Encroachment of tenant added to the tenure*—An encroachment made by a tenant on the property of his landlord—e.g. by a person holding under fazendari tenure—should not be presumed to have been made absolutely for his own benefit and against his landlord but should be deemed to be added to the tenure, and to form part thereof. **GOOROO DOSS ROY v ISSUR CHUNDER DOSE**, 22 W. R., 246, followed. **ESUBAI v DAMODAR ISHVARIDAS** [1 L. R., 16 Bom., 553]

308 ——— *Encroachment by a tenant—Effect of such encroachment—Position of such tenant—Trespasser*—When a tenant encroaches upon the land of his landlord he does not by such encroachment become the tenant in respect of the land encroached upon against the will of the landlord. **PROHLAD TROK v ASHDEVATH DOSE** [1 L. R., 25 Calc., 303]

309 ——— *Landlord's right—Encroachment acquiesced in by landlord*—If a tenant during his tenancy encroaches upon the land of a third person, and holds it with his own tenure until the expiration of the tenancy, he is considered to have made the encroachment for his own benefit but for that of his landlord, and if he has acquired a title against the third person by adverse possession he has acquired it for his landlord, and not for himself. **ANDREARCHAND v HANA R MALLAY** 1 L. R., 10 Calc., 820

310 ——— *Tenant bringing jungle land into cultivation—Assessment of rent—Improvements by tenant*—A tenant who brings

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1869,

378. ———— **Transfer of lease—Effect of unlicensed transfer of lease—Suit for ejectment.** The plaintiffs were mukurari lease-holders, prior to whose lease the proprietor granted a pottah of the same land to A, with a stipulation that A should

LANDLORD AND TENANT—continued.**21. FORFEITURE—continued.**

the premises into the state of repair in which they ought to be left, applies where a term has ceased by forfeiture as well as where it has expired by efflux of time. *SARAFALI TAYABALI v. SUBRAYA BATERAYA* **I. L. R., 20 Bom., 439**

385. — Waiver of forfeiture—Acceptance of rent.—The acceptance of the rent by the landlord after the institution of a suit to recover possession of the land is not a waiver of a forfeiture by the tenant under a condition in the lease. A tenant, upon payment of all costs of the suit, will be relieved from the consequence of such forfeiture, in accordance with the practice of Courts of Equity in England and America. *TMVARSA PURANK v. BADIYA* **2 Bom., 70: 2nd Ed., 66**

386. — Acceptance of rent.—Receipt of rent is not *per se* a waiver of every previous forfeiture; it is only evidence of a waiver. *CHUNDER NATH MISSEER v. SIRDAR KHAN* **[18 W. R., 218]**

387. — Acceptance of rent.—A lease provided that every four years a measurement should be made either by the lessor or by the lessees, and additional rent paid for accretion to the land leased. It then provided for failure on the lessee's part to execute a kabuliati for the excess lands in the following terms: "If at the fixed time stated above, we do not take an Ameen and cause measurement to be made, you will appoint an Ameen and cause the entire land of the said chur to be measured, and no objection on the ground of our recording or not our presence on such measurement chitta shall be entertained, and we will duly file a separate dowl kabuliati for the excess rent that will be found after deducting the settled land of the dowl executed by us from the land settled therein. If we do not, we will be deprived of our right of obtaining a settlement of such excess land, as well as of the land which will accrete in future to the said chur, and no objection thereto on our part shall be entertained." In a suit by the lessor, alleging that in 1876 he had caused a measurement to be made, and had called on the lessees to execute a kabuliati for the rent of certain excess lands, and praying that the lessees might be ejected, the lessees pleaded that the lessor had waived his right to enforce the forfeiture by subsequent receipt of rent. It appeared that payments had been made to the lessor by the lessees, which were accepted as rent, but were kept in suspense, subject to payment by the lessees of the "remaining amount." *Held* that such a qualification did not make the payments anything else than payments of rent, and that the lessor had waived his right to insist on re-entry on the lessees' failure to measure the lands, or execute a kabuliati when called on to do so. *Davenport v. Queen, L. R., 3 App. Cas., 155*, followed. *KALI KRISHNA TAGORE v. FUZZE ALI CHOWDHRY* **[I. L. R., 9 Calc., 843: 12 C. L. R., 592]**

(b) DENIAL OF TITLE.

388. — Denial by tenant of title of landlord.—*Refusal to pay rent where decree is ob-*

LANDLORD AND TENANT—continued.**21. FORFEITURE—continued.**

tained for possession against landlord.—As a general rule, where a person takes land from another and pays rent to him, he cannot deny the title of his landlord; but he is not precluded or estopped from proving, when sued for rent, that that title has expired. He is not warranted, however, in refusing to pay rent simply on the apprehension that he may be called on to pay the rent by a party who is said to have obtained a decree against the landlord for the land. Even if a decree has been passed against the person from whom the landlord derives his title, he is entitled to recover his rent until the decree is put in force. *BURN & Co. v. BUSHO MOYEE DASSEE* **[14 W. R., 85]**

389. — Non-payment of rent—Relief against Co-sharers—Lease from one of several co-sharers—Denial of lessor's title—Estoppel.—A person taking a lease from one of several co-sharers cannot dispute his lessor's exclusive title to receive the rent or sue in ejectment. The plaintiff sued to eject the defendant, his tenant, for failure to pay rent, on the ground that such failure operated as a forfeiture under the terms of the lease. The defendant pleaded (1) that he had paid rent to plaintiff's co-sharer, and (2) that the plaintiff alone could not sue without joining his co-sharer. The Subordinate Judge disallowed both these pleas, and passed a decree declaring the plaintiff entitled to eject the defendant, unless the latter paid up all arrears of rent up to date of decree, together with interest and costs of suit, within three months. This decree was reversed by the District Judge on appeal, who awarded possession of the land to the plaintiff, on the ground that the defendant, having in his written statement denied the plaintiff's exclusive title, was not entitled to be relieved against the forfeiture clause in the lease. *Held*, reversing the decree of the lower Appellate Court, that the plaintiff's alleged cause of action being, not a disclaimer or denial of his title, but merely non-payment of rent, forfeiture for breach of such a covenant in the lease could be relieved against by a Court of Equity. *JAMESDJI SORABJI v. LAKSHMIRAM RAJRAM* **I. L. R., 13 Bom., 323**

390. — Assignee of landlord.—The fact of a tenant having stated in a former suit that he had a good title as against a person alleging himself to be the assignee of the original landlord, does not constitute a forfeiture of the tenure in favour of the landlord or warrant a suit by the landlord for khas possession. *DOORGA KRIPA ROY v. JANOO LATHAK* **18 W. R., 465**

391. — Liability to ejectment.—Where it is proved that one man has been the tenant of another, it is necessary, before the former can be ejected, to show that the tenure has, in some way or other, come to an end, and the tenant cannot be said to have put an end to his relation with his landlord or denied his title if, in order to save himself from ejectment, he, for a time, attorned to a third person who legally put himself in the place of landlord. *HARADHUN MUDDUOK v. DINOBUNDHOO MOJOOMDAR* **25 W. R., 319**

LANDLORD AND TENANT—continued.**21. FORFEITURE—continued.**

not let the land to others without leave. *A* after-

GORDON, STUART & CO v TAYLOR

[W. R., F B, 9

379 ———— **Transfer of tenure—Transfer of non transferable tenure**—The transfer of a tenure not transferable by the custom of the country gives the zamindar no right to take actual possession so long as the rent is paid by the recorded tenant or his heirs and not by a stranger. *JOR KISHEN MOOKERJEE v RAJ KISHEN MOOKERJEE*

[5 W. R., 147

380 ———— *Cuttack*, **Tenures in—Sarbarakari tenures—Alienation without consent of landlord—Alienation by one of**

MAHAPATTRA v RAMA KRISHNA JANA

[I L R, 9 Calc, 528 13 C L R, 114

381 ———— *Bengal Tenancy Act (VIII of 1855)—Occupancy raiyat transfer*

D and by his brother's sons. In a suit by the

See CHANDRA MOHUN MOOKHOPADHAYA v BISSES
SAR CHATTERJEE 1 C W. N, 158

KALINATH CHAKRAVARTI v UPENDRA CHANDRA
CHOWDHRY I L R, 24 Calc, 212

and WILSON v RADHA DULABHI KOER
[2 C W N, 63

LANDLORD AND TENANT—continued.**21. FORFEITURE—continued**

382, ———— *Tenant parting with portion of his holding—Right of landlord to*

POSSESION OF THE LAND TRANSFERRED BY EJECTING THE TRANSFEREE, in the absence of evidence to show that by custom such transfer is not allowed. *Durga Charan Roy v Pandab Nath, Letters Patent*

Chandra, I L R, 4 Calc, 925 and Narendra Nath Roy v Ishan Chandra Sen, 13 B L R, 274; 23 W R, 22, distinguished DOORGA PRASAD SEN v DOULA GAZEE 1 C. W. N, 160

383 ———— The transfer by a raiyat of a portion of his non transferable tenure without the consent of the landlord does not work a forfeiture and the landlord is not entitled to recover khas possession, but is entitled to a declaration that the transfer of a portion of his holding which has not been made with his written consent is not binding on him as provided by s. 83 of the Bengal Tenancy Act. *Kabil Sarlar v Chunder Nath Nag Choudhry, I L R, 20 Calc, 590, followed GOZAFFER HOSSAIN v DABLISH*

[1 C W. N, 162

384, ———— *Assignment of lease contrary to term of lease—Waiver of forfeiture, Effect of—Damages on forfeiture for breach of covenant to repair—An assignment by way of mortgage of leasehold property*

to be a reasonable and proper amount for putting

LANDLORD AND TENANT—continued.

21. FORFEITURE—continued.

plaintiffs are entitled to khas possession. *Debiruddi v. Abdur Rahim, I. L. R., 17 Calc., 196*, distinguished. *NILMADHAB BOSE v. ANANT RAM BAGDI* [2 C. W. N., 755]

399.

Suit for ejectment.—In a suit for ejectment, where it is alleged that the defendant has forfeited his tenure by denying his landlord's title, the forfeiture must be strictly proved. It must be proved what the defendant said, and the judgment in the suit in which he is alleged to have denied the title is not sufficient. *ANULLYA DEBIA v. BHIRUB CHUNDER PATTRO*

[25 W. R., 147]

400.

Ejectment, Suit for.—To a suit brought to recover rent in 1877, the defendant set up his lakhiraj title; this suit was dismissed. In 1880, in a suit brought by the same plaintiff to obtain khas possession of the land in question in the former suit, against the same defendant and three others claiming under the same title as himself, the defence that the land was lakhiraj was set up by all. *Held* that the case fell within the principle of the case of *Suttyabham Dassee v. Krishna Chunder Chatterjee, I. L. R., 6 Calc., 55*, and that the plaintiff, who had successfully proved that he had collected rents from the predecessors of the defendants, was entitled to evict them as trespassers on their failure to prove their lakhiraj title. *ISHAN CHUNDER CHATTERJEE v. SHAMA CHURN DUTT* . I. L. R., 10 Calc., 41; 12 C. L. R., 414

401.

Setting up permanent tenure.—In a suit for ejectment, where the defendants set up a right as a permanent tenant,—*Held* that the setting up of this right was a repudiation of the landlord's title for which he was liable to immediate ejectment. *BABA v. VISHVANATH JOSHI* [I. L. R., 8 Bom., 228]

402.

Suit for ejectment—Cause of action—Written statement.—*P* and *R* brought a suit for ejectment on the allegation that their tenants had failed to come to a settlement in respect of a certain jote, and that a notice to quit had thereupon been served on them. The defendants (tenants) in their written statement denied the landlords' title. The lower Courts found that the jote belonged to the plaintiffs, and the defendants had been and still were in possession of the same as tenants; but dismissed the suit on the ground that the service of notice had not been proved. *Held* (on second appeal) that, inasmuch as the cause of action must be based on something that accrued antecedent to the suit, the denial by the defendants of their landlord's title in the written statement would not entitle the plaintiffs to a decree on the ground of forfeiture. *PRANNATH SHAHA v. MADHU KHULU*

[I. L. R., 13 Calc., 96]

403.

Forfeiture by alienation—Written statement—Cause of action.—Lands in Malabar were demised on anubhavan tenure. Some of them were alienated by the tenant, but the landlord subsequently accepted rent. More than twelve years after the alienation, the landlord

LANDLORD AND TENANT—continued.

21. FORFEITURE—continued.

sued to eject the tenant on the ground that the tenure was thereby forfeited. The tenant for the first time in his written statement denied the landlord's title. *Held* that the plaintiff could not recover in this suit on the ground of the denial of his title in the written statement. *MADAYAN v. ATHI NANGIYAR* . I. L. R., 15 Mad., 123.

404.

Suit for ejectment—Repudiation of title—Setting up different tenure from that alleged by landlord.—The plaintiff in 1870 brought a suit for rent, in which the defendant set up and filed a permanent howladari lease, but admitted that he held at the rent alleged by the plaintiff, and that suit was decreed, the Court thinking it unnecessary to decide the question of the validity of the tenure set up by the defendant. In a suit brought after a notice to quit, which was found to be invalid, to eject the defendant, and for a declaration that he had no such permanent howladari tenure as he alleged, the defendant again set up the howladari lease under which he admitted he had paid a fixed rent to the plaintiff. *Held* that, though the defendant repudiated the particular holding which the plaintiff attributed to him, he did not question the plaintiff's right to receive the rent, and therefore did not in any sense repudiate his landlord's title. What he did amounted merely to questioning the right of the landlord to enhance the rent, which was not such a disclaimer as would result in law in a forfeiture of his tenure. The plaintiff therefore was not entitled to eject the defendant without giving him a proper notice to quit. *Vivian v. Moat, I. R., 16 Ch., 730*, distinguished, on the ground that the principle on which it is based is wholly inapplicable in Bengal. *Baba v. Vishwanath Joshi, I. L. R., 8 Bom., 228*, dissented from. *KALI KRISHNA TAGORE v. GOLAM ALI* . I. L. R., 13 Calc., 248.

The principle laid down in *Vivian v. Moat, I. R., 16 Ch. D., 730*, is not applicable to this country. *KALI KISHEN TAGORE v. GOLAM ALI*

[I. L. R., 13 Calc., 3]

405.

Tenant setting up a permanent lease—Notice to quit—Ejectment suit.—The plaintiff sued for possession of certain land which had been demised to him by the first defendant. The fourth defendant set up a previous purchase from the third defendant, who, he alleged, was a permanent lessee from the first defendant's father, and he contended (*inter alia*) that his vendor not having been served with a notice to quit, he could not be ejected. The lower Appellate Court held that the plaintiff could sue the defendant No. 1 only for specific performance, and could not eject the former tenants with or without notice. On appeal by the plaintiff to the High Court, it was contended for him that the defendant No. 4, having set up a permanent lease, had denied the landlord's title, and was not therefore entitled to any notice to quit. *Held*, confirming the lower Appellate Court's decree, that the plaintiff could not recover, in ejectment, without previous notice to quit. By his statement, that his alienor (defendant No. 3) was a permanent tenant and

LANDLORD AND TENANT—continued

21 FORFEITURE—continued.

392 ————— Forfeiture of

irrespective of the period during which the tenant may have been in possession **SHAMSHER ALI v. DOTA DIBI** 8 C L R., 150

393 ————— Right of landlord to eject on tenant's denying his title—A tenant repudiating the title under which he entered, becomes liable to immediate eviction at the option of the landlord **ISHNU CHINTAMAN v. BALAJIBHAI RAGHUVJI** [L L R., 12 Bom., 352]

394 ————— A raiyat with right of occupancy, in a rent suit brought against him by B, the purchaser of an aima mehal, denied the existence of the relationship of landlord and tenant between himself and B on the ground that the lands occupied by him were not included in the aima mehal purchased by B. B's rent suit having been dismissed for failure of evidence on this point,

VEDDI v. GOBIND CHUNDER NUNDI

[L L R., 6 Calc., 436]

See **SUTTYABHAMA DASSEE v. KRISHNA CHUNDER CHATTERJEE** I L R., 6 Calc., 55

[6 C L R., 375]

and **ISHAN CHUNDER CHATTOPADHYA v. SHAMA CHURN DUTT** I L R., 10 Calc., 41

[12 C L R., 414]

395 ————— Bengal Tenancy

Tenancy Act came into operation *Held* that the forfeiture being complete before the passing of the Act, the case was not affected by s 178 of that Act, and must be governed by the old law Under the decided cases before the Bengal Tenancy Act such a denial by a tenant of his landlord's title

landlord that not being a ground enumerated in the Act, and therefore expressly excluded by s 178 **DEBIRUDDI v. ABDUR RAHIM**

[L L R., 17 Calc., 196]

LANDLORD AND TENANT—continued.

21 FORFEITURE—continued.

396. ————— Law as to

DUL v. ABRAHIM SOLEMAN

4 C. W. N., 42

397. ————— Bengal Tenancy Act (VIII of 1885), s. 49, cl. (b), and s 178—The plaintiffs sued to eject the defendant from certain land alleging that it formed part of their holding, and that the defendant was their sub tenant The defendant denied the plaintiffs title, and set up the title of a third person adverse to that of the plaintiffs The lower Appellate Court found that the defendant was the plaintiff's tenant, and both the lower Courts held that the defendant, by denying the title of his landlord, had forfeited his rights as a tenant and was therefore liable to be treated as a trespasser, and as such to be evicted without notice *Held* that in all cases to which the Bengal Tenancy Act applies there can be no eviction on the ground of forfeiture incurred by denying the

398 ————— Suit to recover has possession—Successful denial of the relationship of landlord and tenant in previous rent-suits, Effect of—Forfeiture—Estoppel—The plaintiffs, owners of a dar patna taluk had sued defendant No 1 for the rents of 12 6 97 The defendant

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of landlord this the plaintiff's possession of the plaintiff's and evinced any relationship of landlord and tenant existing between them The first Court decreed the plaintiffs' suit the lower Appellate Court however, on the ground that the

a denial of the relationship of landlord and tenant does not entail a forfeiture does not apply where that denial is given effect to by a decree of Court It having been found in this case that the land belonged to the plaintiffs and it having been found in the previous suit that the defendants are not their tenants, the defendants have no right to remain upon the land, and the

LANDLORD AND TENANT—continued.**22. ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE—continued.**

cultivated it nor pays rent, the landlord is justified in assuming that he has relinquished it; and the raiyat has no right to ask to be reinstated in possession on the ground that he has never formally relinquished the land. **RAM CHUNG v. GORA CHAND CHUGG**

[24 W. R., 344]

416. ——— Determination

of tenancy—Abandonment of tenure.—Plaintiff, a mirasdar, purchased certain land in 1850 which he allowed to lie waste from 1853. In 1866, on the application of the first defendant who was also a mirasdar to the second defendant, the local Revenue authority, the land was granted to the first defendant and made over to his possession. Plaintiff was admittedly in arrears of list. In a suit by plaintiff to recover the land, it was contended that non-cultivation and non-payment of rent for a considerable time warranted the Revenue authorities in entering upon and disposing of the land. *Held* in special appeal that plaintiff's tenancy could only be determined by his resignation or abandonment of his holding, or by the procedure laid down in Act II of 1834; that the letting land lie fallow does not necessarily lead to the inference of abandonment; and that in the present case plaintiff, not being found to have abandoned the land, had been ejected in a manner which the law does not recognize. *Special Appeal No. 139 of 1878, Mad. S.D.A., 1879, p. 21; S.C., 352 of 1860, Mad. S.D.A., 1861, p. 112; Ganju Reddi v. Asai Reddi, 1 Mad., 12; Kumara dera Mudali v. Nallatambi Reddi, 1 Mad., 407; and Sanumathai-gan v. Samrathai-gan, 4 Mad., 155, considered.* **RAJAGOPALA AYYANGAR v. COLLECTOR OF CHINGLEPUT.**

7 Mad., 98

416. ——— Surrender of

tenancy.—Mere non-occupation and non-cultivation were held not to amount to a surrender of the tenancy so as to get rid of liability to pay the rent; nor does the denial by the defendant in a former suit that he occupied the land amount to a notice of surrender. **BALAJI SITARAM NAIK SALGAVKAR v. BHIKAJI SOYANI PRABHU KANOLEKAR**

[I. L. R., 8 Bom., 164]

VENKATESH NARAYAN PAL v. KRISHNAJI ARJUN

[I. L. R., 8 Bom., 160]

417. ——— Non-cultivation of portion

of jote—Relinquishment.—The non-cultivation of a small portion of an ancestral jote by the admitted holders for one year owing to their minority does not amount to relinquishment as laid down in *Muneerudeen v. Mahomed Ali*, 6 W. R., 67. **RADHA MADHUB PAL v. KALEE CHURN PAL**

18 W. R., 41

418. ——— Abandonment of portion

of jote—Liability for rent of entire jote.—As long as a raiyat retains possession of any portion of his jote, he is liable for the rent of the whole. **SARODA SOONDURIE DEBEE v. HAZEE MAHOMED MUNDUL**

[5 W. R., Act X, 78]

419. ——— Abandonment of share of

holding—Separated member of Hindu family.—

LANDLORD AND TENANT—continued.**22. ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE—continued.**

Where a repartition takes place in a joint Hindu family, and one member becomes the owner of a khas share, being a portion of land with a house, which (after living in it for some time) he eventually abandons, the zamindar is entitled to deal with it in the same way as he is entitled by law to deal with the abandoned holding of a cultivating raiyat. **LALLA NUKCHER LALL v. PATTEN BAHADOOR LALL**

[24 W. R., 39]

420. ——— Voluntary abandonment of permanent tenure—Express relinquishment

—Determination of tenancy.—A voluntary abandonment of a permanent and transferable tenure for a long period, without any inevitable force, merger or other cause beyond the power of the holder, is tantamount to an express relinquishment. If a man so abandon his holding for years, neither he, nor any one under him, can reclaim it. **CHUNDERMONEE NYA BUGOSUN v. SUMBHOO CHUNDER CHUCKERBUTTY**

[W. R., 1864, 270]

SHOODAN KURMAKAR v. RAM CHURN PAL

[2 W. R., 137]

421. ——— Non-payment of rent with

loss of possession.—Non-payment of rent, coupled with the fact that the plaintiff was for five years out of possession, was held to amount to a relinquishment of land. **NEDDEAR CHAND PODDAR v. MODHOSOODEN DRY PODDAR**

7 W. R., 153

422. ——— Non-payment of rent for

some years—Claim to eject tenant put in by landlord after relinquishment.—In a suit for ejectment it appeared that the plaintiff had purchased the house which stood upon the plot in dispute thirteen years prior to the institution of the suit; that he had occupied it for four years and then left the district for business purposes, paying no rent for the seven or eight years of his absence, during which the zamindar put the defendant in possession and took rent from him. *Held* that, even if the plaintiff had a right when he went away to occupy the land if he chose to do so, as he did not do so, he had no right on his return to eject the defendant. **MUTTY SOONUR v. GUNDUR SOONUR**

20 W. R., 129

423. ——— Desertion of land and

house by tenant—Right of landlord to take possession.—When the house had fallen to the ground and the land been deserted by the tenant, the zamindar was held justified in taking possession of the land as abandoned. **BADAM v. MICHEL**

[1 Agra, 266]

BUNNOO BEBEE v. SHEO BUNS KANDO

[3 Agra, Rev., 9]

424. ——— Land left vacant by ten-

ant—Zamindar's right to possession.—A zamindar who without unlawful means enters upon the land after the raiyat's tenancy is at an end, and takes possession, cannot be sued for illegal ejectment. **MAHMOOD ALI KHAN v. GUNGA RAM**

3 Agra, 304

LANDLORD AND TENANT—continued.**21 FORFEITURE—continued.**

[I. L. R., 10 Bom, 660]

408 ——— Assertion of mulgani (permanent) tenure—Right to notice to quit—The setting up of a mulgani right by a tenant is not a disclaimer of title such as disentitles him to a notice to quit in determination of the tenure
Uthamma Devi v. Vairavata Hegde

[I. L. R., 17 Mad, 318]

407 ——— Bombay Land Revenue Code (Bom. Act V of 1879), s. 84—Transfer of Property Act (IV of 1882), ss 111 and 117—Yearly tenancy—Denial of lessor's title prior to suit—Necessity of notice to quit—In cases

action to enable the lessor to recover possession without notice to quit The object of s 84 of the Land Revenue Code is to define the nature of contract of tenancy, but the landlord's right of forfeiture arising from denial of his title is no part of the contract of tenancy, but is a right which the law

LAKSHMAN DEVJI KANDAR

[I. L. R., 20 Bom., 354]

408 ———

the general rule that a tenant who impugns his

408 ——— Denying land lord's title or parting with holding—Bengal Tenancy Act (VIII of 1885), s 44—Grounds of forfeiture—Parting with possession of a holding or denying the title of the person under whom a non-occupancy rayat holds is not a ground of forfeiture, and a non-occupancy rayat cannot be ejected except on the grounds enumerated in s. 44 of the Bengal Tenancy

LANDLORD AND TENANT—continued.**21. FORFEITURE—concluded.**

Act CHANDRA MOHUN MOOKHOPADHAYA v. BISSWASW CHATTERJEE 1 C W. N., 158

See DURGA PRASAD SEV v. DOULA GAZER
 [1 C W. N., 160]

410 ——— Transfer of Property Act (IV of 1882), s. 2 (b) and (c) and ss 105, 111 (g)—Maurasi-mokurari tenure—A lessor brought a suit for ejectment of the lessee for denying his title and asserting title in herself. The defendant in the Court below denied having renounced the title, and pleaded that a maurasi-mokurari tenure was not subject to forfeiture. The lower Court gave a decree for the plaintiff. The defendant appealed against the decree. Held the defendant having denied her landlord's title, and a maurasi mokurari lease being only a lease in perpetuity as defined in s. 105 of the Transfer of Property Act, and not a conveyance in fee, it is subject to forfeiture by renunciation of the lessor's title under s. 111 (g) S 2 (b) and (c) do not apply, as even before the Transfer of Property Act such a lease under similar circumstances would have been liable to forfeiture under the general law. *MONMOHINI DAS v. KALI DAS AHIRI* 2 C. W. N., 292

411. ——— Plea of sale by landlord to his tenant—Suit for possession by landlord before Mamlatdar—In a possessory suit before a Mamlatdar, though it is not competent to a tenant to deny his landlord's title at the date of his lease, it is open to him to show that it has since determined e.g., by sale to him by the landlord, in which case the tenant no longer holds under a title derived from the landlord. *Venur v. NILKANTH* I. L. R., 22 Bom, 428

22. ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE

412 ——— Verbal relinquishment—Sufficiency of relinquishment—The mere use of the words "যাচরত ফিরাতে" in conversation by the tenant when called on to quit

[24 W. R., 118]

413

414. ——— Relinquishment of tenure—When a rayat, without giving any notice, goes away from the land he has occupied, and neither

LANDLORD AND TENANT—continued.**22. ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE—continued.**

cultivates it nor pay rent, the landlord is justified in assuming that he has relinquished it; and the ryat has no right to ask to be reinstated in possession on the ground that he has never formally relinquished the land. **RAM CHUNG v. GORA CHAND CHUNG**

[24 W. R., 344]

415. ———— Determination of tenure.—Abandonment of tenure.—Plaintiff, a mirasidar, purchased certain land in 1850 which he allowed to lie waste from 1853. In 1856, on the application of the first defendant who was also a mirasidar to the second defendant, the local Revenue authority, the land was granted to the first defendant and made over to his possession. Plaintiff was admittedly in arrears of kist. In a suit by plaintiff to recover the land, it was contended that non-cultivation and non-payment of rent for a considerable time warranted the Revenue authorities in entering upon and disposing of the land. *Held* in special appeal that plaintiff's tenure could only be determined by his resignation or abandonment of his holding, or by the procedure laid down in Act II of 1854; that the letting land lie fallow does not necessarily lead to the inference of abandonment; and that in the present case plaintiff, not being found to have abandoned the land, had been ejected in a manner which the law does not recognize. *Special Appeal No. 139 of 1858, Mad. S. D. A., 1859, p. 21; S. C., 422 of 1860, Mad. S. D. A., 1861, p. 112; Ganji Reddi v. Asai Reddi, 1 Mal. 12; Kurnaridra Malali v. Nallatani Reddi, 1 Mad., 407; and Samurattaiyan v. Samurattaiyan, 4 Mal., 153, considered. RAJAGOPALA AYYANGAR v. COLLECTOR OF CHINGELPUTT.* 7 Mad., 98

416. ———— Surrender of tenure.—Mere non-occupation and non-cultivation were held not to amount to a surrender of the tenure so as to get rid of liability to pay the rent; nor does the denial by the defendant in a former suit that he occupied the land amount to a notice of surrender. **BALAJI SITARAM NAIK SAIGAYKAR v. BHUKAJI SOYARI PRABHU KANOLEKAR**

[I. L. R., 8 Bom., 164]

VENKATPESH NARAYAN PAL v. KRISHNAJI ARJUN

[I. L. R., 8 Bom., 160]

417. ———— Non-cultivation of portion of jote.—Relinquishment.—The non-cultivation of a small portion of an ancestral jote by the admitted holders for one year owing to their minority does not amount to relinquishment as laid down in *Munceerudeen v. Mahomed Ali*, 6 W. R., 67. **RADHA MADHUN PAL v. KALEE CHURN PAL**

18 W. R., 41

418. ———— Abandonment of portion of jote.—Liability for rent of entire jote.—As long as a ryat retains possession of any portion of his jote, he is liable for the rent of the whole. **SARODA SOONDURER DEBEE v. HAZEE MAHOMED MUNDUL**

[5 W. R., Act X, 78]

419. ———— Abandonment of share of holding.—Separated member of Hindu family.—

LANDLORD AND TENANT—continued.**22. ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE—continued.**

Where a separation takes place in a joint Hindu family, and one member becomes the owner of a khas share, being a portion of land with a house, which (after living in it for some time) he eventually abandons, the zamindar is entitled to deal with it in the same way as he is entitled by law to deal with the abandoned holding of a cultivating ryat. **LALLA NURCHER LALL v. PUTTIB BAHADUR LALL**

[24 W. R., 39]

420. ———— Voluntary abandonment of permanent tenure.—Express relinquishment.—Determination of tenure.—A voluntary abandonment of a permanent and transferable tenure for a long period, without any inevitable force, merger or other cause beyond the power of the holder, is tantamount to an express relinquishment. If a man so abandon his holding for years, neither he, nor any one under him, can reclaim it. **CHANDERMONI NYA BHOSLEN v. SEMEROO CHINTPE CHICKERETTY**

[W. R., 1864, 270]

SHOODAN KURMAKAR v. RAM CHURN PAL

[2 W. R., 137]

421. ———— Non-payment of rent with loss of possession.—Non-payment of rent, coupled with the fact that the plaintiff was for five years out of possession, was held to amount to a relinquishment of land. **NUDDAN CHAND PODDAR v. MOH-SOONEN DRY PODDAR**

7 W. R., 158

422. ———— Non-payment of rent for some years.—Claim to eject tenant put in by landlord after relinquishment.—In a suit for ejectment it appeared that the plaintiff had purchased the house which stood upon the plot in dispute thirteen years prior to the institution of the suit; that he had occupied it for four years and then left the district for business purposes, paying no rent for the seven or eight years of his absence, during which the zamindar put the defendant in possession and took rent from him. *Held* that, even if the plaintiff had a right when he went away to occupy the land if he chose to do so, as he did not do so, he had no right or his return to eject the defendant. **MURTY SOONTE v. GUNDEE SOONTE**

20 W. R., 129

423. ———— Desertion of land and house by tenant.—Right of landlord to take possession.—When the house had fallen to the ground and the land been deserted by the tenant, the zamindar was held justified in taking possession of the land as abandoned. **RADAM v. MICHEL**

[1 Agra, 266]

BENNOO BERE v. SHEO BENS KANDO

[3 Agra, Rev., 9]

424. ———— Land left vacant by tenant.—Zamindar's right to possession.—A zamindar who without unlawful means enters upon the land after the ryat's tenancy is at an end, and takes possession, cannot be sued for illegal ejectment. **MAHMOOD ALI KHAN v. GUNGA RAM**

3 Agra, 504.

LANDLORD AND TENANT—continued.**22. ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE—continued**

425. ——— Desertion by one of two tenants—*Relinquishment by the other—Lease by landlord—Right of desalter to claim land subse-*

426 ——— Condition for liability for rent until express surrender—*Lessor and lessee—Kabulat—Suit for rent—Notice of surrender—Surrender of land by tenant—The plaintiff*

tiff's claim, but the District Judge in appeal rejected it, holding that the plaintiff had failed to prove that the defendant had occupied the land

He had therefore to show, as against the plaintiff's claim for rent that he (defendant) had terminated the tenancy by some intimation to the lessor (plaintiff) and put him in the way of acting on it by a re-entry on the premises. The High Court accord

KRISHNAJI ARJUN . . . I. L. R., 8 Bom., 160

LANDLORD AND TENANT—continued.**22. ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE—continued.**

In 1877 the plaintiff sued the defendant *B* as heir of *S* for three years' rent from 1871-72 to 1873-74

decree was made against him for the rent claimed. In July 1878 the plaintiff brought the present suit for rent for the subsequent three years, *i.e.*, from 1875-76 to 1877-78. The defendant answered that he had given up the land in 1871-72. He did not assert, either in the former or in the present suit, that he had given notice to the plaintiff of his intention to terminate his tenancy by surrendering the land to the defendant, nor did he allege that the plaintiff had assented to a surrender of it by

under the kabulat but that he was not bound to

liability under that contract he was bound to give a six months' notice of surrender to the plaintiff

his liability to pay the annual rent to the mortgagee

have included it in the former suit. The High Court reversed the decrees of the Courts below, and made a decree for the plaintiff for the rent for 1876-77 and 1877-78. *Venkatesh Narayan Patil v. Krishnaji Arjun*, I. L. R., 8 Bom., 160, referred to and followed. *BALAJI SITARAM NAIK SALGAY-KAR v. BHUKAJI SOTARE PRABHU KANOLEKAR*

[I. L. R., 8 Bom., 164

LANDLORD AND TENANT—continued.**22. ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE—continued.**

428. ——— *Relinquishment by some of lessees—Joint lease.*—Where a joint lease was given to many persons, with an entirety and equality of interest among the tenants, the resignation of some of the joint lessees does not necessarily operate to void the lease. *MOHIMA CHUNDER SEIN v. PETAMBUR SHAMA* **9 W. R., 147**

429. ——— *Relinquishment by manager for joint family—Joint lease.*—Where a member of a joint family is registered as jotedar in a zamindar's serisht, not as for himself only, but as manager for the family, his relinquishment of the jote is not sufficient in law to authorize the zamindar to make arrangements with any others he pleases. *BYKUNT NATH DOSS v. BISSONATH MAJHEE* **9 W. R., 268**

430. ——— *Relinquishment, Effect of—Liability for rent.*—The mere fact of a tenant relinquishing the land will not excuse him from payment of rent if he is otherwise liable, unless he makes some terms with his landlord. *MAHOMED AZMUT v. CHUNDEE LALL PANDEY* **7 W. R., 250**

431. ——— *Liability for rent.*—Where land relinquished by the original tenant is settled by the zamindar with other raiyats, the former raiyat cannot be held liable for rent, even though his relinquishment was not accompanied by notice given in writing. *MAHOMED GHASEE v. SHUNKER LALL* **11 W. R., 53**

432. ——— *Relinquishment by tenant having a right of occupancy.*—Ordinarily tenants having a right of occupancy may, on the expiry of any agricultural year, relinquish their holdings by giving the landlord due notice; and the determination of the tenure of the tenant, whether by forfeiture or relinquishment, will put an end to the tenure of the shikmi holding under the tenant. The relinquishment of the holding will ordinarily put an end to the sub-tenures, provided such relinquishment be accepted by the landlord in good faith. Where the landlord procures the relinquishment of the holding to defeat the under-leases, he should be held bound by such under-leases, although custom may not authorize the tenant to grant leases to endure beyond the duration of his own interest. *HOOLASER RAM v. PURSOTUM LAL* **38 N. W., 63; Agra, F. B., Ed. 1874, 250**

433. ——— *Surrender to landlord, Effect of, on under-tenant.*—When a tenant who holds land for a term with consent of the landlord underlets that land, he parts with his own interest therein to the extent of the interest created by the under-lease, and cannot therefore determine the interest of his under-tenant by surrendering his own term to the landlord. *HEERAMONREE v. GUNGANARAIN ROY* **10 W. R., 384**

434. ——— *Surrender to landlord, Effect of, on under-tenant.*—Where a lessor gives his lessee power to sublet, and the latter sublets, the sub-lessee obtains rights against both of which he cannot be deprived without his own consent.

LANDLORD AND TENANT—continued.**22. ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE—continued.**

The lessee's surrender of his lease cannot operate to the prejudice of the sub-lessee. *NEHALOONISSA v. DHUNNOO LALL CHOWDRY* **13 W. R., 281**

435. ——— *Mokurari tenure—Relinquishment of mokuridar.*—When a mokuridar resigns his tenure, the dar-mokuraris created by him come to an end, but the position of raiyats holding rights of occupancy is not affected by the extinction of either the tenure or the under-tenures. *KOYLASH CHUNDER BISWAS v. BISSESSURE DOSSEE* **10 W. R., 408**

436. ——— *Bengal Tenancy Act (VIII of 1885), ss. 44, 85, 86, cls. (5) and (6)—Surrender by a raiyat—Ejection of an under-raiyat—Notice to quit if necessary.*—Where a raiyat surrenders his holding, the landlord is entitled to re-enter by ejecting the under-raiyat if he is not protected by s. 85 or 86, cl. (6). In such a case no notice to quit is necessary. *NILKANTA CHAKI v. GHATOO SHEKH* **4 C. W. N., 667**

437. ——— *Relinquishment of purchaser from whom tenant holds.*—The rights of a tenant cannot be destroyed by the relinquishment of rights by the purchaser from a pattidar from whom the tenant held by pottah. Before the tenant can be ousted, it must be ascertained whether he holds under a legal title and one which gives him a right of occupancy. *CHUTTER DHAREE SINGH v. JUTTA SINGH* **4 W. R., 76**

438. ——— *Mirasidar.*—A mirasidar does not lose his mirasi rights by relinquishing his pottah. *SUBBARAYA MUDALI v. COLLECTOR OF CHINGLEPUT* **1 L. R., 6 Mad., 303**

439. ——— *Inability to surrender landlord—Mortgage with landlord's consent.*—A tenant who, with the implied consent of his landlord, has mortgaged his holding, cannot resign it to the landlord. He may resign to him the equity of redemption. But till the mortgage has been redeemed, the mortgagee is entitled to retain possession. *SHEOUMBUR RAI v. SHEODHUNG RAI* [1 N. W., 45: Ed. 1873, 41]

440. ——— *Holder of survey field.*—Consent of heirs.—There is no precedent for ruling that the holder of a survey field is incompetent to resign it without the consent of his heirs. *DAVALATA BIN BHUJANGA v. BERU BIN YADOJI* [4 Bom., A. C., 197]

441. ——— *Patnidar—Refusal to pay rent.*—It is not open to a patnidar of his own choice to throw up the patni, and by so doing escape his liability to pay rent. The contract, though not indissoluble, can only be dissolved by an act of the Court, and as the result of proper enquiry. *HEERA LALL PAL v. NEEL MONEE PAL* [20 W. R., 383]

442. ——— *Dar-mirasi mokurari tenure—Notice of relinquishment—Surrender of lease.*—A tenure under a dar-mirasi

LANDLORD AND TENANT—continued.

22 ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE—continued

425. ——— Desertion by one of two

426 ——— Condition for liability for rent until express surrender—Lessor and lessee—Kabuliat—Suit for rent—Notice of surrender—Surrender of land by tenant—The plaintiff

this claim, but the court below in appeal rejected it, holding that the plaintiff had failed to prove that the defendant had occupied the land

He had therefore to show, as against the plaintiff's claim for rent that he (defendant) had terminated the tenancy by some intimation to the lessor (plaintiff) and put him in the way of acting on it by a re-entry on the premises. The High Court accord

cultivating year VENKATESH NARAYAN PAI v. KRISHNAJI ARJUN . I. L. R., 8 Bom., 160

LANDLORD AND TENANT—continued

22 ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE—continued.

427. ——— Omission to make express surrender—Notice of surrender of land by tenant

then tenant in possession of the land, attorned to the mortgagee (plaintiff) by a kabuliat, dated the 1st June 1848. S died in 1870 in possession as tenant. In 1877 the plaintiff sued the defendant B as heir of S for three years' rent from 1871-72 to 1873-74. The defendant answered that he had had no possession or occupation of the land since the death of his father in 1870. It was decided in that suit that the defendant had occupied the land up to 1874 and a decree was made against him for the rent claimed. In July 1878 the plaintiff brought the present suit for rent for the subsequent three years *etc.*, from 1875-76 to 1877-78. The defendant answered that he had given up the land in 1871-72. He did not assert, either in the former or in the present suit,

the defendant without such notice. The lower Courts found the kabuliat proved but threw out the plaintiff's claim on the ground that he failed to prove the defendant's occupation of the land during the three years for which rent was claimed. In the second appeal it was contended for the plaintiff that the tenancy continued until the mortgage was paid off. *Held* that S became a yearly tenant of the plaintiff under the kabuliat but that he was not bound to continue his tenancy until the mortgage was paid off. *Held* also that neither the plaintiff nor S as yearly

and in order to free those assets from a continuing liability under that contract he was bound to give a six months' notice of surrender to the plaintiff. The mere denial by the defendant in the former and present suit, that he had ever occupied the land, could not operate as such notice and his non occupation

also that the right of the plaintiff to the rent for the year 1875-76 depended upon whether he might have included it in the former suit. The High Court reversed the decrees of the Courts below, and made a decree for the plaintiff for the rent for 1876-77 and 1877-78. *Venkatesh Narayan Pai v. Krishnaji Arjun, I. L. R., 8 Bom., 160*, referred to and followed. *BALAJI SITABAM NAIK SALGATKAR v. BHIKAJI SOYARE PRABHU BANOLEKAR* [I. L. R., 8 Bom., 164

LANDLORD AND TENANT—continued.**22. ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE—continued.**

notice stated that these six fields were no longer in their possession, and that they would not be responsible for the assessment. The plaintiff notwithstanding brought this suit to recover assessment for the year 1893-94. The Subordinate Judge held that the defendants continued to be tenants of the fields in question and were liable to the assessment on the ground that the notice of relinquishment did not purport to give vacant possession to the plaintiff. He thereupon passed a decree for the plaintiff. On appeal the District Judge reversed the decree, holding that the notice was a conditional relinquishment which terminated the tenancy. On appeal to the High Court,—*Held* (confirming the decree of the lower appellate Court) that the defendants were not liable to the assessment. *S. 74 of the Bombay Land Revenue Code (Bombay Act V of 1879) only declares the customary common law on the subject of relinquishment of tenancy. A notice of relinquishment is not invalid because it does not purport to give and does not in fact give vacant possession to the landlord. The result is the same, whether the fact that the possession is not vacant appears on the face of the notice or is shown otherwise. A tenant giving up demised land to his landlord is bound to give him vacant possession. The result, however, of his not doing so is not to continue the tenancy, but to create a claim for damages on the part of the landlord. The tenant is liable in damages to the extent of the loss of rent which the landlord sustains during the actual period for which he is kept out of possession and the expenses he is put to in recovering possession of the land.* *BALAKRISHNAJI RAMCHANDRAGIRI v. VASUDEVI MORISHVAR NIPHADKAR. I. L. R., 22 Bom., 348*

451. Construction of a contract in a pottah allowing relinquishment of the land leased, in whole or in part.—A pottah granted a permanent mukurari lease for mining purposes, and gave to the tenant the privilege of surrendering either the whole or part of the land included in the lease, with a deduction to be made in the rent for the extent of the land that might be found on measurement to have been surrendered. *Held* that this privilege could only be exercised by the tenant upon a strict observance of the conditions expressly declared, or plainly implied, in the lease itself. The lease was of 1,974 bighas. The tenant executed a deed of relinquishment of 1,409 bighas 8 cottahs 9 gundas, whereof possession was surrendered with the exception of two plots, one of 2½ and the other of 9 bighas. *Held* that, according to the true construction of the contract, there was error in the judgment of the High Court which decided that the retention of the plots did not altogether deprive the relinquishment of its effect. This retention did more than lessen the area actually surrendered. It was a mistake to suppose that an increased rent to be paid by the relinquishing tenant in proportion to the areas retained and surrendered, respectively, would adjust the point disputed as a matter of law. The contract was that, in case the tenant surrendered a part, the future rent was to be ascer-

LANDLORD AND TENANT—continued.**22. ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE—concluded.**

tained by the measurement of the area relinquished. To have made a new surrender would have been within the competency of the tenant. But for the tenant to continue to hold possession of part of the area which he had purported to relinquish was not open to him, or consistent with the validity of the surrender, the contract not admitting of approximate equivalents in regard to the possession of the total area professed to be surrendered, but not surrendered. Therefore the surrender upon which rested the defence to a suit by the lessor for the full rent was invalid in law. *RAMCHURN SINGH v. RANIGANJ COAL ASSOCIATION. I. L. R., 28 Cal., 29 [L. R., 25 I. A., 210 2 C. W. N., 697]*

452. Abandonment of holding.—Bengal Tenancy Act (VIII of 1885), s. 87.—Transfer of holding by a raiyat—Notice.—In a case in which a raiyat transfers his holding and makes over possession to some one else, it is not the notice under s. 87 of the Bengal Tenancy Act which terminates the tenancy, but the voluntary abandonment coupled with acts on the part of the landlord (not necessarily limited to the giving of notice) indicating that he considered the tenancy at an end, and it would be for the Court in each case to determine whether the tenancy had terminated. *LAL MAJID MANDAL v. ABDULLAH SHEIKH. 1 C. W. N., 198.*

453. Bengal Tenancy Act (VIII of 1885), s. 87.—Transfer of non-transferable occupancy holding.—Forfeiture—Ejectment—Notice.—Where the non-transferable occupancy holding of plaintiff's tenant was purchased by defendant No. 1 at a sale in execution of a decree for money and the latter obtained possession of the land through the Court and pulled down the huts of the tenants standing thereon, and it was found that the said tenant had abandoned the possession of the holding,—*Held* that in a suit for khas possession the plaintiff was entitled to succeed, and a notice under s. 87 of the Bengal Tenancy Act to the old tenant was not necessary. *BHAGABAN CHANDRA MISSRI v. BISSESSWARI DEBYA CHOWDHURANI [3 C. W. N., 46]*

454. Necessity of notice.—Bengal Tenancy Act (VIII of 1885), s. 87.—Ejectment.—Non-transferable raiyati holding, Transfer of.—Where a raiyat sold his non-transferable holding and was no longer in possession of the same and paid no rent for it, and the landlord brought a suit to eject both the transferor and transferee,—*Held* that the landlord was entitled to a decree, and that no notice under s. 87 of the Bengal Tenancy Act was necessary to enable the landlord to obtain khas possession of the holding. *Lal Majid Mandal v. Abdullah Sheikh, 1 C. W. N., 198, and Bhagaban Chandra Missri v. Bissesswari Debya Chowdhurani, 3 C. W. N., 46, relied on.* *Held* also that the provisions of s. 87 of the Bengal Tenancy Act are not exhaustive. *SAMUGAN ROY v. MAHATON. 4 C. W. N., 493.*

LANDLORD AND TENANT—continued.

22. ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE—continued

mokurrari lease of land, which is not let for agricul-

the soil except those held on farming leases JUDOO-
NATH GHOSH v. SCHOENE, KILBURN & Co

[I L R., 8 Calc., 871; 12 C. L. R., 348

and provides in effect that, although the occupancy
tenant may not be turned out, and may not transfer

[I L R., 7 All., 847

444 ———— *N W P Rent*
Act (XII of 1881), s. 9, 31—Relinquishment of ex-
*proprietary rights—*Though an ex proprietary ten

445 ———— Surrender by abandon-
ment—*Madras Rent Recovery Act (Mad Act*
*VIII of 1865), s. 12—*In a suit to recover possession
of certain land comprised in an unexpired lease
granted to the plaintiff by the first defendant it was
pleaded that the plaintiff had left the land waste,
and had refused to pay rent or give a written relin-
quishment of the land and that the first defendant
had accordingly let it to the second defendant
Held that although the defence did not disclose a

446 ———— Mulgeni holding—*Madras*
Rent Recovery Act (Mad Act VIII of 1865),
s. 12—Right of tenant to relinquish his lease
—It is not competent to a mulgeni tenant in South
Canara to relinquish his lease and free himself from

LANDLORD AND TENANT—continued.

22 ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE—continued

his obligation for rent without the consent of the
landlord KAJISHA v. LAKSHMINARAYANA

[I L R., 15 Mad., 67

447. ———— Surrender of lease—*Perpe-*
*tual lease—*The karnatan of a Malabar kovilagam
executed a kulkanoom lease of certain land, the jern
of the kovilagam, in 1818, and in 1861 his successor
demised the same land to the same tenants in perpe-

RAMUNNI v. KERALA-VAIRIA VALLA RAJA

[I L R., 15 Mad., 168

448 ———— Tenant remaining in oc-
cupation after passing a rajinama—*Bombay*
Land Revenue Act V of 1879, s. 74—Effect of the
rajinama—Construction—Practice—Ejectment
*suit by owner of 'inter esse termini'—*The first and
second defendants were sub tenants of the third

449 ———— Relinquishment of pos-
session—*Proof of reconveyance—Receipt of con-*
*sideration—*The mokurrari having granted a dar-
mokurrari lease of part of his holding which was
afterwards surrendered for good consideration rajina-
mas to this effect were executed but not being
registered were not receivable in evidence Held
that to prove a formal deed of reconveyance was not
necessary, the receipt of the money and the relin-
quishment of possession sufficiently showing what
had become of the dar-mokurrari interest IMAM-
BANDI BEGUM v. KANLESWARI PERSHAD

[I L R., 14 Calc., 109

I L R., 13 I A., 160

450 ———— Sufficiency of notice of
relinquishment of land by tenant—*Inamdar*
—Land Revenue Code (Bom Act V of 1879),
s. 74—Remedy of landlord when vacant possession
*not given—Damages—*On the 20th March 1893, the
defendants who held seven fields as tenants of the
plaintiff, the inamdar of the village of Kaneri, gave
him notice of relinquishment of six of them The

LANDLORD AND TENANT—continued.

23. EJECTMENT—continued.

407. *Illegal ejectment—Right of tenant to be restored to possession if dispossessed before tenure is put an end to.*—In a suit for possession by a tenant who claimed to hold under a permanent tenure, it was found that the tenure under which the plaintiff claimed had not, though not found to be permanent, been put an end to. *Held* that the plaintiff was entitled to succeed. **CHANDRA KUMAR GUHA v. MANSUR MOLLAH**

[11 C. L. R., 367]

408. *Soil by tenant for possession.* A tenant, suing to recover possession of an old plot from which he has been dispossessed by his landlord before the termination of his tenancy, is not required to prove a right of occupancy. **CROWN v. JUREFF DHASOOK**

[23 W. R., 387]

409. *Act X of 1859.* s. 25.—An ejectment by a zamindar without application made to the Collector under s. 25, Act X of 1859, is not necessarily an illegal ejectment. The illegality of the ejectment must be established by evidence. **SUBO BHATTAR SINGH v. PHOOL KOSMAR**

W. R., 1864, Act X, 68

470. *Act X of 1859.* s. 25, cl. 6, and s. 25. *Liquidation Act, 1859, s. 15.*—*Suit for possession by raiyat.*—When a zamindar, of his own authority, and without the intervention of the Collector under s. 25, Act X of 1859, ejects a tenant whose lease has expired, the tenant may recover possession, without reference to the title of the zamindar to eject him, in a suit under s. 15, Act XIV of 1859; but if the tenant sues under cl. 6, s. 23, Act X of 1859, the question is open as to whether the tenancy was at an end or not; and if it was at an end, the tenant must fail in his suit. **JONARDEN ACHARJE v. HARADEN ACHARJE**

[B. L. R., Sup. Vol., 1020: 9 W. R., 513]

URJOON DUTT BONICK v. RAM NATH KERNOMAN

21 W. R., 123

471. *Restoration to tenancy after wrongful eviction.*—If a raiyat, holding at a particular rent, is unlawfully evicted, he does not necessarily cease to hold at that rent; and if restored to possession, he is restored to his original holding. **RASHBHAU GHOSE v. RAM CHAND GHOSE**

22 W. R., 11

LUTTEEPUNNISA BIBEE v. POOLIN BEH. SEIN

W. R., F. B.

472. *Liability damages for ejectment.*—In a suit by an ejected tenant to recover a year's balance of rent from his landlord, who had let a lease to another party and dispossessed himself, it was held that, by granting the lease, the landlord was himself responsible for an ejectment occasioned to the tenant, and that the rent was not collected from the tenant. **MUN M. JHA**

14 W. R., 43

LANDLORD AND TENANT—continued.

23. EJECTMENT—continued.

473. *Effect of order of ejectment—Bengal Rent Act, 1869, s. 53—Right to standing crops on land.*—The effect of an order of ejectment under s. 53 of the Rent Act is to dispossess the raiyat, not only of the land, but also of the crop standing thereon, the object of such an ejectment being to terminate completely the connection between the parties as landlord and tenant. **IN THE MATTER OF DEBJAN MANTON v. WAJID HOSSAIN**

[I. L. R., 5 Calc., 135]

474. *Suit for arrears of rent—Bengal Rent Act (Beng. Act VIII of 1869), ss. 22, 52.*—A landlord who sues for arrears of rent, for the whole of one year, and a portion of the next, and also for ejectment, is not entitled to a decree for the latter. The right to ejectment under s. 22 of the Rent Act (Bengal Act VIII of 1869) accrues at the end of the year, and forfeiture or determination of the tenancy thereupon takes place, but if the landlord sues for subsequent arrears, he treats the defendant as his tenant, and the right acquired under that section must be taken to have been waived. **JOGESHU CHOWDHRAIN v. MAHOMED KHAN**

I. L. R., 14 Calc., 33

475. *Agreement by occupancy-tenant to relinquish his holding—Agreement not enforceable—Suit for specific performance of agreement—Jurisdiction of Civil Courts.*—The defendant, who was a tenant with a right of occupancy in the land cultivated and held by him, executed a kabuliati in respect of the said land in favour of the plaintiffs (his landlords), agreeing that on the expiry of the term fixed in the kabuliati he should have no claim to retain possession of the cultivatory holding, but that he should give it up. Plaintiffs sued for ejectment of the defendant on the basis of the agreement, and obtained a decree from the lower Appellate Court. On second appeal by the defendant, *Held* that, inasmuch as the plaintiffs sought to enforce the covenant contained in the kabuliati in such a manner as to extinguish the rights of occupancy found upon the facts of the case to have been acquired by the defendant in the land in suit, such suit must fail, as opposed to the policy of the law as shown in the provisions of s. 9 of the

Act (Act XII of 1862). Such a tenant may be evicted from his holding, but not enforced of the agreement, given in that manner as to extinguish the rights of the plaintiff in this manner.

AURI THAK

O AIL, 615

s. 116—Ejectment—Unlawful—Grant—holder—land to—in—assessed—At

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LANDLORD AND TENANT—continued.

23. EJECTMENT—continued.

467. *Illegal ejectment—Right of tenant to be restored to possession if dispossessed before tenure is put an end to.*—In a suit for possession by a tenant who claimed to hold under a permanent tenure, it was found that the tenure under which the plaintiffs claimed had not, though it was found to be permanent, been put an end to. *Held* that the plaintiffs were entitled to succeed. *CHANDAR KUMAR GUHA v. MUNOUL MOLLAH*

(11 C. L. R., 387)

468. *Suit by tenant for possession.*—A tenant, suing to recover possession of an old jote from which he has been dispossessed by his landlord before the termination of his tenancy, is not required to prove a right of occupancy. *CROWDA v. JHUKKEE DHANOOK*

(23 W. R., 387)

469. *Act X of 1859, s. 25.*—An ejectment by a zamindar without application made to the Collector under s. 25, Act X of 1859, is not necessarily an illegal ejectment. The illegality of the ejectment must be established by evidence. *SUREE RUTTER SINGH v. PHOON KOON-SANEE*

W. R., 1894, Act X, 68

470. *Act X of 1859, s. 23, cl. 6, and s. 25—Limitation Act, 1859, s. 15.*—*Suit for possession by raiyat.*—When a zamindar, of his own authority, and without the intervention of the Collector under s. 25, Act X of 1859, ejects a tenant whose lease has expired, the tenant may recover possession, without reference to the title of the zamindar to eject him, in a suit under s. 15, Act XIV of 1859; but if the tenant sue under cl. 6, s. 23, Act X of 1859, the question is open as to whether the tenancy was at an end or not; and if it was at an end, the tenant must fail in his suit. *JONARDUN ACHARJEE v. HARADUN ACHARJEE*

(B. L. R., Sup. Vol., 1020: 9 W. R., 513)

URJOON DUTT BONICK v. RAM NATH KURMO-KAR

21 W. R., 123

471. *Restoration to tenancy after wrongful eviction.*—If a raiyat, holding at a particular rent, is unlawfully evicted, he does not necessarily cease to hold at that rent; and if he is restored to possession, he is restored to his original holding. *RASHIDHARY GHOSE v. RAM COOMAR GHOSE*

22 W. R., 487

LUTTERPUNNISSA BIBEE v. POOLIN BEHAREE SEIN

W. R., F. B., 91

472. *Liability to damages for ejectment.*—In a suit by an ejected lessee to recover a year's balance of rent from his lessor, who had given a lease to another party and dispossessed plaintiff, *Held* that, by granting the later lease, defendant had made himself responsible for any loss which might thereby be occasioned to plaintiff, even though he (the lessor) had not collected the rent himself. *GOBIND CHUND JUTTEE v. MUN MOHUN JHA*

14 W. R., 43

LANDLORD AND TENANT—continued.

23. EJECTMENT—continued.

473. *Effect of order of ejectment—Bengal Rent Act, 1869, s. 53.*—*Right to standing crops on land.*—The effect of an order of ejectment under s. 53 of the Rent Act is to dispossess the raiyats, not only of the land, but also of the crop standing thereon, the object of such an ejectment being to terminate completely the connection between the parties as landlord and tenant. *IN THE MATTER OF DURJAN MANTON v. WAJID HOSSAIN*

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474. *Suit for arrears of rent—Bengal Rent Act (Beng. Act VIII of 1869), ss. 22, 52.*—A landlord who sues for arrears of rent, for the whole of one year, and a portion of the next, and also for ejectment, is not entitled to a decree for the latter. The right to ejectment under s. 22 of the Rent Act (Bengal Act VIII of 1869) accrues at the end of the year, and forfeiture or determination of the tenancy thereupon takes place, but if the landlord sues for subsequent arrears, he treats the defendant as his tenant, and the right acquired under that section must be taken to have been waived. *JOGESHWEE CHOWDHURAI v. MAHOMED ABRAHIM*

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475. *Agreement by occupancy-tenant to relinquish his holding—Agreement not enforceable—Suit for specific performance of agreement—Jurisdiction of Civil Courts.*—The defendant, who was a tenant with a right of occupancy in the land cultivated and held by him, executed a kabuliat in respect of the said land in favour of the plaintiffs (his landlords), agreeing that on the expiry of the term fixed in the kabuliat he should have no claim to retain possession of the cultivatory holding, but that he should give it up. Plaintiffs sued for ejectment of the defendant on the basis of the agreement, and obtained a decree from the lower Appellate Court. On second appeal by the defendant, *Held* that, inasmuch as the plaintiffs sought to enforce the covenant contained in the kabuliat in such a manner as to extinguish the rights of occupancy found upon the facts of the case to have been acquired by the defendant in the land in suit, such suit must fail, as opposed to the policy of the law as shown in the provisions of s. 9 of the Rent Act (Act XII of 1891). Such a tenant may be ousted from his holding by enforcement of the remedies given in that behalf in s. 95 (d) and (f), but not in the manner sought by the plaintiff in this action. *KAURI THAKURAI v. GANGA NARAIN LAL*

(I. L. R., 10 All., 615)

476. *Evidence Act (I of 1872), s. 116—Estoppel—Kumaki land—Unassessed waste reclaimed by plaintiff—Pottah granted to defendant.*—The plaintiff, who was the holder of a warg in Canara, demised adjacent waste land to one who brought it into cultivation and remained in occupation for two years. The land was not assessed to revenue in the name of either of these persons. At the end of two years the tenant let into occupation a sub-tenant, who subsequently assigned his right to the defendant, the holder of a neighbouring warg.

LANDLORD AND TENANT—continued.

23. EJECTMENT—continued.

407. — *Illegal ejectment—Right of tenant to be restored to possession if dispossessed before tenure is put an end to.*—In a suit for possession by a tenant who claimed to hold under a permanent tenure, it was found that the tenure under which the plaintiffs claimed had not, though not found to be permanent, been put an end to. *Held* that the plaintiffs were entitled to succeed. *CHANDAN KUMAR GUHA v. MUNGUL MOLLAH*

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LANDLORD AND TENANT—continued.

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LANDLORD AND TENANT—continued.**23. EJECTMENT—continued.**

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14 W. R., 43

LANDLORD AND TENANT—continued.**23. EJECTMENT—continued.**

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LANDLORD AND TENANT—continued.

23. EJECTMENT—continued.

THIS SECTION IS BY NO MEANS EXHAUSTIVE

[I. L. R., 18 Bom., 110

495. ——— Transfer of

as landlord, and that there was any contract of tenancy between them. *Unkamma Devi v. Vakula Hegde*, I. L. R., 17 Mad., 218, and *Dodhu v. Madhavrao Narayan Gadre*, I. L. R., 18 Bom., 110, referred to *Haidri Begum v. Nathu*

[I. L. R., 17 All., 45

LANDLORD AND TENANT—continued.

23. EJECTMENT—continued

the
day
in
quit

[I. L. R., 24 Bom., 426

497. ——— Permanent

the landlord's title, and absolved him from the obligation which would have devolved on him of giving to the defendant a notice to quit if the defendant had set up a tenancy from year to year. *BABA v. Vishwanath Joshi* I. L. R., 8 Bom., 228

498. ——— Tenant from

before decree cannot be counted. *NANABHAI RUTAMJI v. PESTANJI JAMSETJI* 8 Bom., A. C., 31

499: ——— Tenant from year to year. — A notice to quit, running only for ten days, is not a sufficiently reasonable notice on which a landlord can maintain a suit in ejectment against a tenant from year to year. *RAM BORTON MUNDUL v. NETTRO KALLY DOSZER* I. L. R., 4 Calc., 339

BHAU

I. L. R., 20 Bom., 759

LANDLORD AND TENANT—continued.**23. EJECTMENT—continued.**

That, even if the raiyats had not a permanent tenure, they could not be ejected except upon notice at the end of the Fasli, so long as they paid the rent due upon the lands. *SAMINADA PILLAI v. SUBBA REDDIAR* **I. L. R., 1 Mad., 333**

488. ———— *Mittadar, Right of—Kudivaram or tenant-right, Presumption as to—Right to eject.*—The kudivaram (tenant-right) does not necessarily vest in a mittadar, as such, so as to entitle him to eject the raiyats on his mitta on notice as tenants from year to year. *SRINIVASA CHETTI v. NUNJUNDA CHETTI* **I. L. R., 4 Mad., 174**

489. ———— *Tenure transferable by custom.*—The mere fact that a tenure is transferable under the custom of the district does not make it one which is not terminable by the landlord on sufficient notice. *SHAMA SUNDARI DABI v. NOBIN CHUNDER KOLYA* **6 C. L. R., 117**

490. ———— *Claims of rival tenants—Pottah by landlord to tenant out of possession.*—In a suit between two rival tenants living the same landlord, the one striving to obtain, and the other to maintain, possession of a particular parcel of land, where it is found that the defendant is still in occupation and has not been ejected by the zamindar, the mere production of a pottah alleged to have been granted to the plaintiff by the zamindar cannot of itself determine the tenancy of the defendant, or enable the plaintiff to stand in the shoes of the zamindar and serve the occupant tenant with a notice to quit. *CHUNDER MONEE CHANDA v. BRINDABUN NATH* **25 W. R., 132**

491. ———— *Permanent tenancy pleaded.*—Suit to eject defendants from certain land held by them from the plaintiff under a chalgeni (yearly) demise of 1869. The defendants pleaded that they were kattugudi (permanent) tenants of the land in question: they had set up their title as kattugudi tenants previous to the chalgeni demise, but it did not appear that they had re-asserted it up to date of suit. *Held* that the issue whether the plaintiff had given a notice to quit, reasonable and in accordance with local usage, should be tried. *Baba v. Vishvanath Joshi, I. L. R., 8 Bom., 228*, considered. *SUBBA v. NAGAPPA* **I. L. R., 12 Mad., 353**

492. ———— *Notice under s. 84 of Bom. Act V of 1879—Plea of permanent tenancy, raised for the first time in defendants' written statement in ejectment suit—Denial of landlord's title—Objection of want of proper notice raised first in second appeal.*—The plaintiff sued to eject the defendants as tenants holding over after notice to quit. The notice required the defendants to vacate within eight days. The defendants pleaded that they were mirasi or permanent tenants. This plea was not proved. The Court of first instance passed a decree awarding immediate possession. The Appellate Court held that, although the notice to quit was not according to s. 84 of the Bombay Land Revenue Code (Bombay Act V of 1879), still as the suit was brought long after the expiry

LANDLORD AND TENANT—continued.**23. EJECTMENT—continued.**

of the proper period, the plaintiff was entitled to recover possession "at the end of the present cultivating season." *Held* in second appeal that; the notice to quit not being according to law, there was no legal determination of the tenancy. The plaintiff could not therefore succeed. *Held* also that the plea of permanent tenancy set up for the first time in the defendant's written statement in the present case was not such a disclaimer of the landlord's title as to dispense with proof of a legal notice to quit on the part of the plaintiff: *Baba v. Vishvanath Joshi, I. L. R., 8 Bom., 228*, dissented from. *Held*, further, that it was open to the defendants for the first time in second appeal to raise the objection of want of proper notice. *VITHU v. DHONDI I. L. R., 15 Bom., 407*

See also *HAJI SAYYAD v. VENKTA*

[I. L. R., 15 Bom., 414 note]

and *RAM CHANDRA APPAJI ANGAL v. DAULATJI*

[I. L. R., 15 Bom., 415 note]

493. ———— *Plea of permanent tenancy—Decree, Forms of.*—The plaintiff sued to eject the defendants from certain land. The defendants pleaded that they were permanent tenants under a lease granted to their ancestor by the plaintiff's grandfather in 1805. The Court of first instance awarded the plaintiff's claim. On appeal, the District Judge held that the lease on which the defendants relied was one determinable on the grantee's death, but as the grantee's heirs (the defendants) had continued in possession paying the stipulated rent, they were entitled to a reasonable notice to quit. The District Judge accordingly passed a decree, directing the defendants to vacate the land at the expiry of six months from the date of the decree. —*Held* that the District Judge could not, in his judgment, give the notice which the plaintiff was bound to give to his tenants. Plaintiff's suit must fail for want of notice. *ABU BAKAR SAIBA v. VENKATRAMANA VISHVESHWAR* **I. L. R., 18 Bom., 107**

494. ———— *Plea of permanent tenancy—Denial of title—Forfeiture—Waiver—Objection taken in second appeal.*—The plaintiff sued the jaghirdars of a certain village (defendants Nos. 1 to 11) and certain of their tenants (defendants Nos. 12 to 18) for specific performance of an agreement made between the plaintiff and the jaghirdars, by which the jaghirdars agreed to give up to the plaintiff possession of certain lands, which were in possession of the tenants (defendants Nos. 12 to 18). The jaghirdars pleaded that they were unable to give possession, as the tenants (defendants Nos. 12 to 18) were permanent tenants and refused to quit the land. The tenants (defendants Nos. 12 to 18) put in a separate defence, also alleging that they were permanent tenants of the jaghirdars. The lower Appellate Court held that the tenants (defendants Nos. 12 to 18) were yearly tenants and did not hold in perpetuity, and that the jaghirdars had power to eject them. That Court therefore passed a decree for the plaintiff for specific performance of the agreement as against the jaghirdars and for possession as against the other defendants. The

LANDLORD AND TENANT—continued.

23 EJECTMENT—continued

if a landlord has failed to give his tenant the written notice of ejectment required by s. 36, the tenancy is not to be treated in law as having ceased on determination of the term provided but is to be treated as still subsisting. Where upon the expiry of the term of a lease, but without the written notice of ejectment required by s. 36 of the Act having been given by the lessor possession was taken and rents collected by persons claiming under a subsequent lease,—*Held* that the tenancy of the first lessees did not cease upon the determination of the term of their lease, and that the second lessees were wrong doers in usurping possession and collecting rents and profits, and were liable in a suit for damages by way of mesne profits after deduction of a sum paid by them for Government revenue, but without deduction of what they had paid the lessor of of the expenses they had incurred in collecting the rents. *SHITAB DEVI v. AJUDHIA PRASAD*

[I. L. R., 10 All., 13]

511.

Kasavargan

tenant—Transfer by tenant without consent of landlord—The munsidars of a village in the Tanjore District sued to recover a manor which had been put

others of the defendants, who were now in occupation. *Held* that the plaintiffs were entitled to recover the land with out proof of notice to quit to the occupants. *SUBBARAYA v. NATARAJA*

[I. L. R., 14 Mad., 98]

512

License to oc-

*cupy—The plaintiffs, who were munsidars of a village, permitted the defendants to occupy their land on the condition that they should do blacksmiths work for the plaintiffs. The defendants ceased to do the work after a time. *Held* that the plaintiffs were entitled to eject the defendants without notice to quit.* *ATHAKUTTI v. GOVINDA*

[I. L. R., 16 Mad., 97]

513

Plea of per-

manent tenancy—In a suit for possession of land the plaintiffs claimed title under a lease from the shrotrichandras of the village where the land was situated. The defendants who had obstructed the plaintiffs from taking possession of part of the land claimed to have permanent occupancy rights, and asserted that the shrotrichandras were entitled not to the land itself, but to melvaram only. To meet this

LANDLORD AND TENANT—continued

23 EJECTMENT—continued.

did not appear that the latter were in possession as tenants at the time when the suit was filed. *VITHALINGA v. VEYKATACHALA* I. L. R., 18 Mad., 194

514.

Suit by tenant

to recover possession claiming as full owner—Subsequent claim as yearly tenant unjustly dispossessed—Denial of landlord's title—Variance in statement between pleading and proof—A plaintiff sued to recover possession of certain fields, etc., alleging that he was a permanent tenant of the defendant, having purchased the right of occupancy from previous occupants of the land. The lower Court held that the plaintiff's vendors were mere

given. But *held* that the plaintiff could not recover; for his claim and the conduct of his case amounted to a denial of his landlord's (defendant's) title. In his suit the plaintiff claimed to be full owner, and he could not afterwards claim to be restored to possession on the ground that he was a yearly tenant entitled to notice to quit which was not given. *LALU GAGAI v. BAI MOTAN BIBI*

[I. L. R., 17 Bom., 631]

515.

Non-occu-

*pancy rayat—Bengal Tenancy Act (VIII of 1885), ss. 44 and 45—Suit for ejectment by a lessor against another holding over after expiry of his lease—Certain land was let by the zamindar to the defendants on lease for a term of eight years. After the expiry of the lease the plaintiffs obtained a lease of the land, and giving a month's notice to quit to the defendants who had continued in possession after their lease expired brought a suit to eject them. *Held* that the defendants could not be considered*

[I. L. R., 25 Cal., 75]

516

Bengal Tenancy

Act (I of 1885), s. 49—Ejectment of under tenant not holding under written lease—S. 9 of the Bengal Tenancy Act does not prescribe any period of notice, or that the suit for ejectment shall not be brought until the expiry of a certain term after the expiry of the period of notice. The effect of the section seems to be that the landlord can serve a notice to quit at any time in the course of the year, but that he shall not eject the tenant until the end of the year next following the year in which the notice to quit is served that is to say an under rayat must under any circumstances get a full year expiring at the

LANDLORD AND TENANT—continued.

23. EJECTMENT—continued.

possession in the middle of a year. **BALKRISHNA VAMANAJI GAVANKAR v. JASHA FARSI SHIREL**
[I. L. R., 19 Bom., 150]

502. ———— Tenant-at-will

—*Reasonable notice to quit.*—In a suit for ejectment brought against a tenant who had no permanent right in the holding, after a notice to quit within thirty days had been served on the tenant, the lower Appellate Court considered the notice insufficient, but gave the plaintiff a decree for possession on a certain date named in the decree. *Held*, following the case of *Hem Chander Ghose v. Radha Pershad Paleet*, 23 W. R., 110, that the suit was itself a sufficient notice to quit, and that the decree made was correct. **RAM LAL PATAK v. DINA NATH PATAK** . I. L. R., 23 Calc., 200

503. ———— *Effect of determining tenancy on sub-tenants—Bombay Land Revenue Code (Bom. Act V of 1879), s. 81.*—A landlord putting an end, by proper notice, to the tenancy of his tenant, thereby determines the estate of the under-tenants of the latter. **TIMMAPPA KUPPAYYA v. RAMA VENKANNA NAIK**
[I. L. R., 21 Bom., 311]

504. ———— *Tenancy reserving an annual rent—What notice a raiyat holding an annual tenancy is entitled to.*—In a tenancy created by a *kabuliat* with an annual rent reserved, a tenant is entitled to six months' notice expiring at the end of the year of the tenancy before he can be ejected. **KISHORI MOHUN ROY CHOWDHURY v. NUND KUMAR GHOSAL**
[I. L. R., 24 Calc., 720]

505. ———— *Bengal Tenancy Act (VIII of 1885), s. 49—Suit for ejectment—Written lease—Holding over.*—A suit to eject an under-raiyat under s. 49, cl. (b), of the Bengal Tenancy Act cannot be maintained without a notice to quit, and the suit itself cannot be regarded as a sufficient notice. **Ram Lal Patak v. Dina Nath Patak**, I. L. R., 23 Calc., 200, distinguished. Where an under-raiyat was let into occupation under a *kabuliat* for a year, but held over for a number of years,—*Held* that he was not holding under any written lease, and therefore under cl. (b) of s. 49 of the Bengal Tenancy Act he was not liable to be ejected without a notice to quit, although the terms under which he was holding were the same as those under which he had been let in under a written lease. **RABIBAM DASS v. UMA KANT CHUCKERBUTTY**
[2 C. W. N., 238]

506. ———— *Monthly tenancy.*—By indenture, dated 1st February 1856, A leased certain premises in Calcutta to B for a term of ten years, as from 1st November 1855, at a rent of Rs 100 per month payable monthly. A covenanted with B to grant to her on her request, to be made within three months of the expiry of the term, a fresh lease on the same terms for three years. The defendant in 1858 became the assignee of the lease without notice to A, and continued to occupy the premises

LANDLORD AND TENANT—continued.

23. EJECTMENT—continued.

and paid rent in the name of B up to August 1866. No renewal of the lease was applied for, and the plaintiffs, who became the representatives of A in June 1866, gave notice through their attorneys on 6th September 1866 to B to quit on 1st November 1866, and on that date demanded possession from B and from the defendant. *Held* that the tenancy after 31st October 1865 was a *monthly tenancy* in the name of B, and was terminated on the 31st October 1866 by the notice of 6th September 1866. **BROJONATH MULLICK v. WESKINS**
[2 Ind. Jur., N. S., 163]

507. ———— *Tenant from year to year—Occupancy, Right of.*—If a tenant from year to year receive no notice determining the tenancy at the end of eleven years, and is allowed to remain on the land after the commencement of the twelfth year, he cannot be ejected until the end of the twelfth year, when he will acquire a right of occupancy. **DARIAO BISHOON v. DOWLATA**
[5 N. W., 9]

508. ———— *Limitation—Patni lease—Receipt of rent—Notice.*—A, a Hindu, died leaving his widow B and his mother C. B adopted D. C granted a *patni pottah* to E of certain property belonging to the estate of A. During the minority of D, B received the rent from E, and afterwards D, on attaining majority, realized rent from E by suits under Act X of 1859. Twelve years after attaining majority, D sued for cancellation of the *patni* lease and for obtaining *khass* possession of the property. *Held* that the suit was not barred. The receipt of rent was no confirmation of the *patni* lease; it only created the relation of landlord and tenant. *Held* also that the plaintiff was not entitled to *khass* possession before the relationship of landlord and tenant was legally determined by a reasonable notice. *Semble*—Such notice should expire at the end of the year. **BUNWARI LAL ROY v. MAHIMA CHANDRA KNUALL**
[4 B. L. R., Ap., 86; 13 W. R., 267]

509. ———— *Denial of title—Suit for possession by purchaser at sale in execution of decree.*—In a suit by the plaintiff, a purchaser at a sale in execution of a decree who had obtained possession through the Court, and been subsequently ejected, to recover the lands he purchased, it appeared that R and G, two of the defendants, had mortgaged the lands in 1867 to G R, the third defendant, and in 1870 G R had obtained against his mortgagors R and G a decree on his mortgage in execution of which the lands were sold and purchased by the plaintiff in 1872. The plaintiff alleged that after he got possession in 1873 he had leased the property to R and G. They denied the letting by the plaintiff, and alleged that they were tenants of G R. The plaintiff failed to prove that R and G were his tenants. *Held* that the plaintiff was entitled to recover. *Held* that, as R and G claimed only to be tenants of G R, they could not retain possession of the land, merely because the plaintiff had failed to prove that he had let the land to

LANDLORD AND TENANT—continued.

23 EJECTMENT—continued.

535 ————— *Inamdar*—
Tenants cannot be ejected as mere trespassers. If they are yearly tenants they are entitled to a clear

to the house in which they are residing. [L. R., 6 Bom., 70]

to the house in which they are residing. [L. R., 6 Bom., 70]
which they are required to quit the land. *Barrs v. JAMIE SHAIKH*, 23 W. R., 371

See also *MAHOMED RASID KHAN CHOWDHURY v. JADOO MURDHA*, 20 W. R., 401

537 —————
Prope
11th 1
1832,
to the house in which they are residing. [L. R., 6 Bom., 70]
501 occupy in the house No 5, Thornhill Road, are not vacated within a month from this date, I will file a suit against you for ejectment as well as for recovery of rent due at the enhanced rate." On the 1st Feb-

notice to quit as the law required, inasmuch as the notice did not expire with the end of a month of the tenancy, and that this defect was not cured by the

of Property Act, and sufficient to determine the tenancy, inasmuch as it gave the tenant more than fifteen days' notice, and its terms were such that he could with perfect safety have acted upon it by quitting the premises at the proper time, namely, by the end of the month, which he must be presumed

given by the notice must be taken to have been given for the convenience of the tenant, and not with the object of continuing the tenancy, and that the suit for ejectment not having been brought till long afterwards, was maintainable. *Doe v. Smith*, 5 Ad. & E., 303. *Ahearn v. Bellman*, L. R., 4 Exch. D., 201. *Nocoordass Mullick v. Jeevaraj Baboo*, 13 B. L. R., 263, and *Jagat Chunder Roy v. Rup Chand Chatterji*, L. R., 9 Cal., 48, referred to. Also *per MAHMOOD, J.*—The words "fifteen days" in s. 105 of the Transfer of Property Act imply

LANDLORD AND TENANT—continued

23 EJECTMENT—continued.

a fixation of the shortest period of notice allowed by the section, and the term 'expiring' means that the terms of the notice must be such as to make it capable of expiring according to law at the right time, so as to render it safe to the tenant to quit coincidentally with the end of a month of the tenancy, without incurring any liability to payment of rent for any subsequent period. *BRADLEY v. ATKINSON*

[L. R., 7 All., 598]

Held, on appeal under the Letters Patent, that, with reference to the terms of s. 105 of the Transfer of Property Act the latter was not such a notice to quit as the law required inasmuch as it was not a notice of the lessor's intention to terminate the contract at the end of a month of the tenancy. *PER STRAIGHT, J.*—*Quare*—Whether the latter was a notice to quit at all. Also *per STRAIGHT, J.*—A

will, if he remains in occupation of the premises, become a trespasser. *Ahearn v. Bellman*, L. R., 4 Exch. D., 201, distinguished. The judgment of *MAHMOOD, J.*, reversed, and that of *OLIPHANT, J.*, affirmed. *BRADLEY v. ATKINSON*

[L. R., 7 All., 599]

539. ————— *Ejectment by landlord*—Notice to quit, *Feudal*—A landlord, desirous of ejecting a tenant whose lease has expired, need not give him a written notice to quit, a verbal notice being sufficient. *GOLAM MEHMOOD v. AMJUD ALI*, 23 W. R., 312

539 ————— *Tenant without right of occupancy*—The "reasonable notice to quit" which a tenant without a right of occupancy may claim from his landlord before he can be ejected, need not be confined to a demand of possession and notice to quit on a certain day. It is sufficient if the landlord asks for a higher rate of rent and gives the tenant notice to quit if he declines to pay it. A suit for ejectment against a tenant without a sufficient demand of possession and would justify a decree containing a date fixed for ejectment. *HAN CHUNDER GHOSH v. RADHA PERSHAD PALLET*

[23 W. R., 410]

539 ————— *Notice to quit or pay an enhanced rent*—Two fold claim, both for rent and ejectment, not sustainable—Decree for rent and ejectment—*Beng. Act VIII of 1869, s. 14*—Where A, after notice to his tenants to pay rent at an enhanced rate from the commencement of the ensuing year or quit, brought a suit in which he prayed for a higher rate of rent or ejectment in the alternative, *Held* that in such a suit the plaintiff could not insist upon a two fold claim for both rent and ejectment nor obtain a decree for rent for the first quarter and ejectment thereafter. It is doubtful whether a notice in the alternative form to pay enhanced rent from a certain day or quit is a good notice. *Jamoo Mundur v. Brijoo Singh*, 23 W. R.,

LANDLORD AND TENANT—continued.**23. EJECTMENT—continued.**

end of the agricultural year, from the time when the notice is served. *NAHARULLAH PATWARI v. MADAN GAZI* 1 C. W. N., 133

517. ——— *Sufficiency of notice—Ejectment, Application for.*—A zamindar cannot rightfully seek the assistance of the Collector in ejecting a raiyat during the currency of the agricultural year, nor can an application of this kind for immediate ejectment be received in the light of a notice to the tenant requiring him to resign his holding at the end of the agricultural year. *MAHOMED SHAH v. USGUR HOSSEIN* 5 N. W., 151

JADOONUNDUN SINGH v. FAUJDAR KHAN

[5 N. W., Ap., 1

518. ——— *Unreasonable notice.*—A notice to quit within thirty days, served by a landlord or his tenant at a time when the crops are ripening, is unreasonable and insufficient. Where such a notice was given, the Court refused to determine what would have been a sufficient notice, and to make a decree to take effect at a future date on the basis of such notice. *Per GARTH, C.J.*—The cases of *Mahomed Rasid Khan Chowdhry v. Jodoo Mirda*, 20 W. R., 401, and *Hem Chunder Ghose v. Radha Pershad Paleet*, 23 W. R., 440, considered and doubted. *JUBRAJ ROY v. MACKENZIE*

[5 C. L. R., 231

519. ——— *Reasonable notice—Tenant other than occupancy-raiyat.*—A tenant other than an occupancy-raiyat is entitled to a reasonable notice to quit. What is a reasonable notice is a question of fact, which must be decided in each case according to the particular circumstances and the local customs as to reaping crops and letting land. It is not necessary that the notice must expire at the end of the year. *Janoo Mundur v. Brij Singh*, 22 W. R., 548, and *Rajen Ironath Mookhopadhyaya v. Bassider Ruhman Khondkar*, I. L. R., 2 Calc., 146, considered. *JAGUT CHUNDER ROY alias BASHI CHUNDER ROY v. RUP CHAND CHANGO*

[I. L. R., 9 Calc., 48; 11 C. L. R., 143

520. ——— *Reasonableness of notice.*—There is no authority for the proposition that a notice to quit to a raiyat other than an occupancy raiyat must terminate at the end of a cultivating year or be a three months' notice. Such a raiyat is only entitled to a "reasonable" notice, and such as will enable him to reap his crop; what is a "reasonable" notice is a question of fact to be decided in each case, having regard to its particular circumstances, and the local customs as to reaping crops and letting land. *RADHA GOBIND KOER v. RAKHAL DAS MUKHERJI* I. L. R., 12 Calc., 82

521. ——— *Reasonable notice.*—It is not necessary that the period allowed in a notice to quit by a landlord to his tenant should terminate at the end of the year, but the notice must be in respect of the date of determination of the tenancy as well as in other respects a reasonable notice. A notice to quit served on the 26th of Pous, and allowing two months to the tenant to vacate his holding, such period thus expiring on the 26th

LANDLORD AND TENANT—continued.**23. EJECTMENT—continued.**

Falgun, when it appeared that cultivation began in the months of Magh and Falgun, and that they were the months for letting out land in the district, held not to be a reasonable notice. *BIDHUMUKHI DABEA CHOWDHRAIN v. KEFYUTULLAH*

[I. L. R., 12 Calc., 93

522. ——— *Korfa raiyats in Manbhhum—Ejectment—Act X of 1859.*—There is no authority for the proposition that notice to quit to a korfa raiyat in Manbhhum must be a six months' notice. Such a raiyat is only entitled to a "reasonable notice." What is a reasonable notice is a question of fact, which must be decided in each case according to the particular circumstances and local customs as to reaping crops and letting land. *Kishori Mohan Roy Chowdhry v. Nund Kumar Ghosal*, I. L. R., 24 Calc., 720, distinguished. *Jagut Chunder Roy v. Rup Chand Chango*, I. L. R., 9 Calc., 48; *Radha Gobind Koer v. Rakhal Das Mukherji*, I. L. R., 12 Calc., 82; *Bidhumukhi Dabea Chowdhrain v. Kefyutullah*, I. L. R., 12 Calc., 93; and *Kali Kishen Tagore v. Golam Ali*, I. L. R., 13 Calc., 3, referred to and followed. *DIGAMBAR MAHTO v. JHARI MAHTO*

[I. L. R., 23 Calc., 761

523. ——— *Determination of tenancy—Inamdars.*—An inam, existing under grant made in 1811, became in 1863 the subject of arrangement between the zamindar, who had succeeded the grantor in the zamindari, and the inamdars. This resulted in what was either a confirmation of the original grant on terms more favourable to the zamindar, or a new grant of an estate in all respects, save as to the rent, similar to the previously existing estate, which was a tenancy in perpetuity. To a suit brought by certain mortgagees against the inamdars to enforce mortgage rights existing since 1842, the defence was made that possession taken of the inam lands by the Collector in 1845 had determined the original inam rights therein, as well as the lien of the mortgagees. The present zamindar, son and successor of the grantor of 1813, now claiming that he had determined the tenancy by a notice to quit,—*Held* that the tenancy was not determinable by such notice. *MAHARAJAH OF VIZIANAGRAM v. SURYANARAYANA*

[I. L. R., 9 Mad., 307
L. R., 13 I. A., 32

524. ——— *Notice ending with cultivating year—Inamdar—Partition.*—An inamdar cannot eject a yearly tenant without six months' notice to quit, ending with the cultivating year. Nor can he eject other tenants, except on the expiration of their term of years or other interest in the land. Where a family of inamdars disagree among themselves, and one of them obtains a decree for partition against the others, he cannot, in execution thereof, eject (without due notice to quit) the tenantry on such portion of the land as may have been allotted to him under that decree in a suit to which such tenantry were not parties, and by which therefore their rights are not barred. *NARAYAN BHIVRAV v. KASHI* I. L. R., 6 Bom., 67

LANDLORD AND TENANT—continued.

23 EJECTMENT—continued.

H & N, 518, referred to. JOGENDRO CHUNDER GHOSH v. DWARKA NATH KARMAKAR

[I L R., 15 Cal., 681]

539. ————— Necessity of proof of service—In answer to the plaintiff's suit

to quit on the defendant. GOPALRAO GADSESH v. KISHORE HALIDAS . I L R., 9 Bom., 527

540. ————— Mode of service of notice to quit upon under raiyat, s 49, Bengal Tenancy Act, and Rule 3 of Ch I of the Rules framed by the Local Government—Service through Post office—A notice to quit under s. 49 of the Bengal Tenancy Act was sent by post in a registered cover, and it was found that the notice was delivered to the defendant. Held that the notice had not been properly served, the mode of service being as described in the Rules made by the Government under the Bengal Tenancy Act. LARA DAS MALAKAR v. RAM DOYAL MALAKAR

[2 C W. N., 125]

541. ————— Suit for ejectment—Notice to quit by post—Bengal Tenancy Act (VIII of 1880), s 189—Mode of service of

ment upon that were alleged to be in his wrongful possession, and subsequently instituted a suit to eject him from those lands. Held that the notice was bad in law, and the suit for ejectment based upon such a notice must fail. Tara Das Malakar v. Ram Doyal Malakar, 2 C W N., 125, referred to. LALA MAKHAN LAL v. LALA KULDIP NARAIY

[I L R., 27 Cal., 774]

542. ————— Notice to quit—Transfer of Property Act (IV of 1882), s 106—The plaintiff sued the defendant to recover possession of a certain house in Bombay and for arrears of rent. The defendant pleaded that the house in question was occupied by the Beni Israel school of Bombay which was maintained by the Anglo Jewish Association of London, that he was honorary secretary of the school and as such, and not in his per-

that this was not sufficient service under s 106 of the Transfer of Property Act (IV of 1882). Held that the service was sufficient. BHOJABHAI v. HATEM SAMUEL . I L R., 22 Bom., 754

543. ————— Bengal Tenancy Act (VIII of 1885), sch III, art 3, and Rule 3 Ch I, of the Rules framed by the Local Government. In a suit to eject the defendants (under raiyats) from their holding, a plea was taken

LANDLORD AND TENANT—continued.

23. EJECTMENT—concluded.

in the first Court that the notice to quit was not

3 framed by the Local Government under the provisions of the Bengal Tenancy Act. Held that there was no rule requiring that the notice should be served through the Court. What is really required is that it should be served in the same manner as provided for in the Civil Procedure Code. That the objection to the notice taken here for the first time cannot be entertained in second appeal. JOGI NATH GORE v. PITAMBAR GHOSH . 3 C W N., 215

544. ————— Transfer of Property Act (IV of 1882), s 106—Suit for ejectment. Service of notice upon one of several joint tenants—In a suit for ejectment under the Transfer of Property Act, a notice to quit which was addressed to all the joint tenants who lived in commutability was handed over to one of them, and he signed an acknowledgment of it. Held that the service was a good service. RAJONI BIBI v. HAFIZONNISSA BIBI . [4 C W N., 572]

545. ————— Transfer of Property Act (IV of 1882), s 106, cl 2—Service of notice through post office by registered letter.—Service of notice to quit by a registered letter through the post office is not necessarily a non compliance with the provisions of cl 2, s 106 of the Transfer of Property Act. Rajoni Bibi v. Hafizonnissa Bibi, 4 C W N., 572, followed. SUBADINI v. DURGA CHAMAN LAW . I L R., 23 Cal., 118 [4 C W N., 790]

24. BUILDINGS ON LAND, RIGHT TO REMOVE AND COMPENSATION FOR IMPROVEMENTS

546. ————— Removal of buildings by tenant. Tenant holding over after expiry of lease.—By indenture, dated 1st February 1896 A leased certain premises in Calcutta to B for a term of ten years, as from 1st November 1855, at a rent of Rs 100 per month, payable monthly. A covenanted with B to grant to her on her request, to be made within three months of the expiry of the term, a fresh lease on the same terms for three years and that it should be law-

expiration of the term or extended term to remove,

1898, became, by various mesne assignments to the assignee of the lease, without notice to A, and subsequently repaired and erected buildings on the land.

LANDLORD AND TENANT—continued.

23. EJECTMENT—continued.

als. doubted. *MOHAMAYA GOOWTA v. NIRMADHAR RAI*. I. L. R., 11 Cal., 633

531.

Tenancy

—Notice to quit by a free agreement with the land. Held that it is not a notice to quit. On the 28th September 1891, the plaintiff gave defendants, who held his land as annual tenants, a notice in the following terms: "Therefore, within two days from the receipt of this notice, meet us, increase the rent and give us a bond writing, or in default, on the 31st March 1892, we shall keep present two cool men and take full possession of the said land with all trees, etc., on that day, and no contest of yours in that matter will avail; and if you take contentment, we shall have recourse to a regular suit to obtain possession, and you will be responsible, etc." Held that the notice was a good and valid notice to terminate the tenancy. *KIKABHAI GOSWAMHAI v. KALP GHATA*. I. L. R., 22 Bom., 241

532.

Brigat Tenancy

Act (VIII of 1885)—Suit for ejectment—Notice including some land of which the defendant is found to be not in possession.—A notice to quit is not valid in law simply because of a small error in the statement in such notice of the area of the land in consequence of which it included some land which the defendant was found not to hold under the plaintiff. *SHAMA CHURN MITTAL v. WOOMA CHURN HALDAR*. [I. L. R., 25 Cal., 36

2 C. W. N., 108

533.

Tenancy created

by a kabuliat—Six months' notice requiring the tenant to vacate the holding before the expiry of the last day of the year, whether good.—In a tenancy created by a kabuliat with an annual rent reserved, a six months' notice to quit requiring the tenant to vacate the holding within, instead of on, the expiry of the last day of a year of the tenancy, is a good notice in law, inasmuch as there was no appreciable interval between the expiry of the notice and the end of a year of the tenancy. *Page v. Here*, 15 Q. B., 681, distinguished. *IMAIL KHAN MAHOMED v. JAGJAN BIRI*

[I. L. R., 27 Cal., 570

4 C. W. N., 210

534.

Co-owners

Notice to quit by one co-owner—Notice to quit before expiry of term of lease—Suit in ejectment by one co-owner—Parties—K and P were co-owners of certain property in Bombay, and by a writing, dated January 1883, they granted a lease of the whole of the said property to the defendant for a term of three years from the 1st March 1883 to the 28th February 1886, at a monthly rent of Rs 705. Subsequently to the granting of the said lease, viz., on the 1st September 1883, P conveyed her equal and undivided moiety of the said property to the plaintiff. On the 30th January 1886, i.e., a month before the expiration of the lease, the plaintiff gave the defendant notice to determine the tenancy, and required him to quit on the 1st March then next. The defendant refused, and the plaintiff brought

LANDLORD AND TENANT—continued.

23. EJECTMENT—continued.

this suit for possession and for occupation-rent from the 1st March 1886. The defendant pleaded that the notice to quit, being given by one of the co-owners only, was invalid, and further that the plaintiff was not entitled to sue alone. Held that the notice was a valid notice, and that the suit was maintainable by the plaintiff alone. The second clause of the lease was as follows: "If you mean me to vacate at the completion of the term, you must give one month's notice. In accordance therewith, I will vacate and give up possession to you." Held that the notice to quit was not invalid under the above clause of the lease, although given before, instead of after, the expiry of the term. *EBRAHIM PIR MAHOMED v. CHUSHTI SHARAFI DE VIRRE*. I. L. R., 11 Bom., 644

535.

Transfer of

Property Act (II of 1882), s. 106—Notice to quit—"Expiring with the end of a month of tenancy."—Where fifteen days' notice to quit was served upon a tenant on the 7th of Assin,—Held, the Court in determining the question of the validity of such a notice should find what in any given case is the "end of a month of the tenancy." If the end of a month of the tenancy in this case was the 23rd Assin 1298 (15 days from the 7th Assin), the notice would be a good one, otherwise not. *BRADLEY v. ATKINSON*, I. L. R., 7 All., 899, referred to. *SONA ULLAH v. THOOLUKHO NATH GORAM*

[2 C. W. N., 383

536.

Transfer of

Property Act (IV of 1882), s. 106—Meaning of "fifteen days"—Notice. The fifteen days' notice to quit referred to in s. 106 of the Transfer of Property Act means notice of fifteen clear days. *SUNODINI v. DURGHA CHARAN LAW*. I. L. R., 28 Cal., 118.

[4 C. W. N., 780.

537.

Service of notice

Proof of service—Publication in newspaper—Termination of tenancy—Adverse possession.—Proof of service of a notice to quit on a tenant, which is confined to proving that such a notice, addressed to the tenant, was published in a local newspaper under circumstances which made it highly probable that the notice in question came to the knowledge of the tenant, is not, without more, such proof of service as will suffice to terminate the tenancy, or entitle the tenant to contend that he remained, after the date fixed by the notice for vacation, in adverse possession of the premises. *CHANDMAL v. BACHRAJ*

[I. L. R., 7 Bom., 474

538.

Service of

notice to quit by registered letter, Sufficiency of.—Where a notice to quit was sent by a registered letter, the posting of which was proved, and which was produced in Court in the cover in which it was despatched, that cover containing the notice with an endorsement upon it purporting to be by an officer of the post office stating the refusal of the addressee to receive the letter,—Held that this was sufficient service of notice. *LOOTF ALI MEAH v. PEAREE MOHUN ROY*, 16 W. R., 223, and *Papillon v. Branton*, 5

LANDLORD AND TENANT—continued

site on which the house was build were sold separately to two individuals from whom the defendant purchased both. On the 31st July 1866 the tenure itself was sold for arrears of rent to one N, from whom the plaintiff purchased it. The plaintiff brought this suit to recover possession of the land free from all incumbrances by the removal of the house. The Court refused to give the plaintiff a decree for possession. **SHRIDAS BANDOPADHYA v. BAMANDAS MUKHOPADHYA**

[8 B. L. R., 237; 15 W. R., 360]

[14 B. L. R., 205 note; 15 W. R., 363]

553 ————— *Erection of indigo factory*—Right to remove materials—Where a lessee of land under an *ijara* erected an indigo fac

KINGO SINGH ROY v. NUSSEERDOOZEN MAHOMED CHOWDRI 17 W. R., 97

applied to a contract of tenancy, is not inconsistent with anything in the Contract Act, and therefore is unaffected by it. **RUSSELL v. MURDOCK & LOKE NATH KURMOOKAR**

[1 L. R., 5 Cal., 688; 5 C. L. R., 492]

555 ————— *Ownership in*

LANDLORD AND TENANT—continued.

24 BUILDINGS ON LAND RIGHT TO REMOVE AND COMPENSATION FOR IMPROVEMENTS—continued

administered by the Courts of Equity in England. The case of **Thakoor Chunder Poramanick, B. L. R., Sup Vol., 535**, discussed. **JUGGUT MOHINEE DOSSEE v. DWARAKA NATH BYSACK**

[1 L. R., 8 Cal., 582]

556 ————— *Suit to eject tenant*—Right to remove buildings or get value for them—In a suit to eject defendants (who held under a lease) from a house ground and to compel them to remove the buildings thereon erected, the defendants pleaded that the lease was a permanent lease, and that plaintiff had no right to eject. The lease expressly authorized the lessee to build. The Court of first instance held that it was not a permanent

557 ————— *Kasavargam tenant*—Right to buildings—Compensation on eviction—A Kasavargam tenant has a proprietary right to his house on the land and when evicted, he is entitled to compensation for his buildings. **BLAIR v. SATYENDRATHAMMAL** 1 L. R., 23 Mad., 118

558 ————— *Hindu law*—Wells dug with consent of landlord—Where tenants from year to year, with permission of the landlord, sank wells in the land demised—Held that they were not entitled under Hindu law to any compensation therefor from the landlord after the determination of the tenancy. **VENKATAYAGAPPA v. THEIGUMALAI** 1 L. R., 10 Mad., 112

559 ————— *Malabar kanam*—Change in character of land—Positive acquisition of landlord—Estoppel—Compensation for improvements by tenant—Land was demised on kanam for wet cultivation. The devisee changed the character of the holding, by making various improvements which were held to be inconsistent with the purpose for which the land was demised. On a finding that the landlord had stood by while the character

of the kanam. **Ramsay v. Dyson**, 1 L. R., 1 H. L.

LANDLORD AND TENANT—continued.**24. BUILDINGS ON LAND, RIGHT TO REMOVE AND COMPENSATION FOR IMPROVEMENTS—continued.**

The defendant continued to occupy the premises, and paid the rent in the name of *B* up to August 1866. No renewal of the lease (which expired on 31st October 1865) was ever demanded by *B* or by any one claiming under her. The plaintiffs, who had become *A*'s representatives in June 1866, gave notice, through their attorneys, on 6th September 1866, to *B* to quit on 1st November 1866, and not to remove buildings and fixtures put up since 1st November 1855; and on 1st November 1866 the plaintiffs, in pursuance of the notice of the 6th of September, demanded possession of *B* and of the defendant who was in actual occupation of the premises. *Held* that the acceptance of rent by *A* and his representatives from the defendant holding over after the expiration of the original term did not constitute a renewal of the lease for three years; that the defendant was not entitled to a renewal for three years; that the tenancy after 1st October 1865 was a monthly tenancy in the name of *B*, and was terminated on 31st October 1866 by the notice of 6th September 1866; that the defendant was not entitled to remove buildings erected; but that he might remove the machinery. *Brojonath Mullick v. Weskins*

[2 Ind. Jur., N. S., 163]

547. — Removal of material of house by outgoing tenant—Custom of Calcutta—Injunction.—In an action of ejectment the defendant set up a claim by custom to remove the materials of a house erected by him on the premises in dispute; but the Court granted an injunction to restrain him from doing so, though giving him leave to bring a suit to establish the special custom: in default of such suit being brought, the injunction to be perpetual. *Doyal Chand Lahar v. Bhoyrunath Khetry* Cor., 117

548. — Huts, Right of tenant to—Custom for outgoing tenant to remove huts—Acquiescence.—On a case stating that the plaintiff became tenant to the defendant of certain land in Calcutta, and at their time of becoming such tenant purchased from the outgoing tenant, with the defendant's knowledge, two tiled huts which were then standing on the land; that "it had been the practice in Calcutta for tenants to remove such tiled huts as those of the plaintiff erected upon the land let to such tenants, and such huts were by such practice treated as the property of the tenants, who, by such practice, were in the habit of disposing of them without the consent of their landlords;" that relying on the abovementioned practice, the plaintiff, with the defendant's knowledge, had partially pulled down and rebuilt such huts; that the plaintiff's tenancy was determined, and the plaintiff ejected from the land by the defendant; that before leaving she endeavoured to pull down and remove the huts, but that she was prevented from so doing by the defendant, who claimed the huts as her property.—*Held* that the plaintiff, by the practice stated, was entitled, before giving up possession of the land, to pull down and remove the tiled huts. *Held* further that, apart from the existence of a valid custom entitling the tenant to remove

LANDLORD AND TENANT—continued.**24. BUILDINGS ON LAND, RIGHT TO REMOVE AND COMPENSATION FOR IMPROVEMENTS—continued.**

tiled huts, the plaintiff, having bought the huts from the outgoing tenant with the defendant's knowledge, and relying on the practice, and with the defendant's knowledge having partially pulled down and rebuilt the huts, was entitled as against the defendant to remove them. *Parbutty Bewah v. Woomatara Dabee* [14 B. L. R., 201]

549. — Removal of buildings on land—Ownership in land and buildings.—According to the usages and customs of this country, buildings and other such improvements made on land do not, by the mere accident of their being attached to the soil, become the property of the owner of the soil. The general rule is that, if he who makes the improvement is not a mere trespasser, but is in possession under any *bona fide* title or claim of title, he is entitled either to remove the materials, restoring the land to the state in which it was before the improvement was made, or to obtain compensation for the value of the building, if it is allowed to remain for the benefit of the owners of the soil; the option of taking the building, or allowing the removal of the materials, remaining with the owner of the land in those cases in which the building is not taken down by the builder during the continuance of any estate which he may possess. *In the Matter of the Petition of Thakoor Chunder Paramanick*

[B. L. R., Sup. Vol., 595: 6 W. R., 228.]

This case contemplates the case of an admitted sale by a vendor in possession, not a case where the title and possession are disputed. *Mudho Soodun Chatterjee v. Juddoofutty Chuckerbutty* [9 W. R., 115]

Held not applicable to other than innocent purchasers. *Sohn Singh v. Keola Bibber* [16 W. R., 169]

550. — Removal of buildings—Illegal possession.—In a suit for possession on the ground that the defendant had become illegally possessed of certain land, the Court, while giving plaintiff a decree, allowed the defendant to remove or get compensation for a house which he had erected thereon. *Doobga Churn v. Koonj Behary Pandey* [3 Agra, 23.]

551. — Sale by tenant without consent of landlord—Position of purchaser—Erection of brick-built house by tenant—Right of owner of land to houses built thereon.—The relation between landlord and tenant is that of parties to a contract. The contract is entire and single. If a portion of a tenure be sold either by the tenant or in execution of a decree of the Civil Court against the tenant in the absence of any consent by the zamindar, the only mode in which effect can be given to the alienation is to treat the purchaser as holding a rent-free tenure subordinate to that of the original tenant. In this country the ownership and right of possession in the soil does not necessarily carry with it a right to the possession of buildings erected thereon. A tenant

LANDLORD AND TENANT—continued.

TO RE-
FOR IM-

586

Lease granted

by Hindu widow for long term of years—Death of widow—Voidable lease—Suit by heir to recover property from lessee six years after widow's death—Compensation for tenants' improvements—Acquiescence—A Hindu widow adopted a son, but reserved to herself for life the right of managing her husband's property. The adopted son sold his interest in the property to the plaintiff. In 1885, the widow granted a lease of the property to defendants for fifty nine years at a rent of Rs50 a year. She died the following year (1886). The defendants continued in possession of the property under the

lying by, but a lying by under such circumstances as to induce a belief that a voidable lease would be treated as valid. DATTAJI SAKHAM RAJADIKSHI v KALBA YESH PARABHU I. L. R., 21 Bom., 749

587

Tenant erecting

buildings and making improvements under mistaken belief of his landlord having larger interest in property than he really had—A tenant who has erected buildings and effected improvements on the landlord's property is not entitled to be paid their value on the determination of the tenancy, merely because he has acted under the mistaken belief shared by his landlord that he had a larger interest in the property than he really had. JUGMOHANDAS VIMBRAWANDAS v PALLONJEE EDULJEE MOHDEWA

[I. L. R., 22 Bom., 1

588

Malabar Com-

penetration for Tenants Improvements Act (Mad Act I of 1887), ss 1, 2, 3, 6—Mode of assessing

LANDLORD AND TENANT—continued

24. BUILDINGS ON LAND RIGHT TO RE-
MOVE AND COMPENSATION FOR IM-
PROVEMENTS—continued

compensation for improvements—The sum to be allowed for compensation for a tenant's improvements under Madras Act I of 1887 is not to be determined by capitalizing either the annual rent or the annual increment due to the improvement but a reasonable sum should be awarded, assessed with reference to the amount by which the market value or the letting value or both has been increased thereby, and the Court should take into consideration the actual condition of the improvement at the time of the eviction, its probable duration, the labour and capital which the tenant has expended in effecting it, and any reduction or remission of rent or other advantage which the landlord has given to the tenant in consideration of the improvement. In the absence of evidence as to the actual market value in the place where the land is situated, the reasonable mode of estimating the compensation consists in taking the cost of the improvement and interest thereon and in adjusting the compensation to be awarded with reference to the matters specified in s 6 VALIA TANDURATTI v PARVATI PARVATI v VALIA TANDURATTI I. L. R., 13 Mad., 454

589

Malabar

Compensation for Tenants Improvements Act (Mad Act I of 1887), s 7—General Clauses Consolidation Act s 6—A suit to recover property in Malabar demised on kanom was pending, when the Malabar Compensation for Tenants Improvements Act came into force. Held on the construction of ss. 1, 5, 7, that the tenants' right to compensation should be dealt with in accordance with the provisions of that Act. MALIKAY v SHANKUNNI

[I. L. R., 13 Mad., 502

570

Malabar Com-

penetration for Tenants Improvements Act (Mad

that he was entitled to receive under the head of compensation for improvements the capitalized value of the produce of coconut trees planted by him computed with reference to the probable productive life of the trees. Held that the plaintiff was entitled to redeem, and that the defendant was not entitled to have the whole of the future annual produce of the trees taken into consideration in computing the value of improvements under the Malabar Compensation for Tenants Improvements Act, 1887. SHANGUNNI MENON v VEERAPPAN PILGAI

[I. L. R., 18 Mad., 407

571.

Malabar Com-

penetration for Tenants Improvements Act (Mad Act I of 1887) s 3—Suit to redeem kanom—The sum to be allowed for tenants' compensation for improvements under Madras Act I of 1887 is to be

LANDLORD AND TENANT—continued.**24. BUILDINGS ON LAND, RIGHT TO REMOVE AND COMPENSATION FOR IMPROVEMENTS—continued.**

129, followed. *KUNHAMMED v. NARAYANAN MUS-SAD* . . . I. L. R., 12 Mad., 320

See *RAVI VARMAN v. MATHISSEN*

[I. L. R., 12 Mad., 323 note

where, however, compensation was refused for some of the improvements, the landlord not having by his conduct acquiesced in their being made, but though compensation was not allowed, the tenant was allowed to remove them.

560.

*Tenant expending money on land with landlord's knowledge and consent—Acquiescence—Estoppel—Right of tenant on eviction to be recouped the money so expended—Buildings erected on land held under lease, Removal of:—*The defendant entered into occupation of certain land with the permission of the plaintiff, who was the owner, and erected buildings and otherwise expended money upon it. The plaintiff and the defendant were relations and lived near each other. The plaintiff constantly visited the land and knew what the defendant was doing, but made no objection. Subsequently the plaintiff, being anxious to obtain from the defendant an acknowledgment of his (the plaintiff's) title, induced (but without misrepresentation or fraud) the defendant to sign a rent-note. The Court found that, although this rent-note was, in terms, a lease for one year, yet the intention of the parties was not that the defendant should at the expiration of the year, or on any subsequent demand, hand over to the plaintiff the land with the buildings which had been erected by the defendant with the plaintiff's implied consent, without being recouped for the expenditure thus incurred; that subsequently to the execution of the rent-note the defendant had erected other buildings, and that the plaintiff knew of this, and made no objection. *Held* that the plaintiff could not recover possession of the land, or require the removal of the buildings without recouping the defendant the money he had expended. The plaintiff was estopped from denying the claim of defendant. He had stood by in silence while his tenant had spent money on his land. *DATTATRAYA RAYAJI PAI v. SHRIDHAR ARAYAN PAI* . . . I. L. R., 17 Bom., 736

561.

*Claim of tenant to compensation for buildings erected by him.—*A tenant of land demised to him cannot, on the termination of his tenancy, claim compensation for buildings erected by him. *HUSAIN v. GOVARDHANDAS PARMANANDAS* . . . I. L. R., 20 Bom., 1

562.

*Buildings erected by tenant—Acquiescence by landlord—Estoppel—Presumption of grant for building purposes.—*Where a landlord had not objected to buildings erected by his tenant for a period of twenty-five years, and during that time had received rent from the tenant, *Held* that even if the Court were not justified in holding that the land had originally been granted for building purposes, the landlord would

LANDLORD AND TENANT—continued.**24. BUILDINGS ON LAND, RIGHT TO REMOVE AND COMPENSATION FOR IMPROVEMENTS—continued.**

be precluded from ejecting the tenant without compensation. *YESHWADABAI v. RAMCHANDRA TUKARAM* . . . I. L. R., 18 Bom., 66

See *KRISHNA KISHORE NEOGI v. MAHOMED ALI* [3 C. W. N., 255

563.

*Buildings erected by tenant without consent of landlord.—*Where it is proved that the tenancy is not a permanent one, that the tenant erected a pucca building on the land without the consent of the landlord, the tenant on eviction is not entitled to any compensation for the building from the landlord. *Dattatraya Rayaji Pai v. Shidhar Narayan Pai*, I. L. R., 17 Bom., 736; *Yeshwadabai v. Ram Chandra Tukaram*, I. L. R., 18 Bom., 66, distinguished. *ISMAIL KHAN MAHOMED v. JAIGUN BIDI* I. L. R., 27 Cal., 570 [4 C. W. N., 210

564.

*Additions made by tenant to property of landlord without permission—Acquiescence of landlord—Obligation to compensate tenant—Estoppel.—*Where the lessee of a dwelling-house, being fully aware of his position as such lessee, made certain additions to the leased premises without the permission of his lessor, but apparently with his knowledge and without any interference on his part, and subsequently, when the lessor sued to eject him for non-payment of rent, claimed compensation for such additions, *Held* that the lessor was entitled to recover possession from the lessee without paying him compensation. *Ramsden v. Dyson*, L. R., 1 H. L., 129, and *Willmott v. Barber*, L. R., 15 Ch. D., 96, referred to. *NAUNHAI BHAGAT v. RAMESHA BHAGAT* [I. L. R., 16 All., 328

565.

*Buildings on land—Ownership in land and buildings—Right of tenants to compensation under the Land Acquisition Act for buildings erected by them—Transfer of Property Act (IV of 1882), s. 108, cl. (h).—*A plot of land was acquired under Act X of 1870 for the construction of a road within the town of Calcutta; the tenants who had erected masonry buildings on portions of the land and who were in possession at the time of the acquisition claimed before the Collector the value of their interest; but the owner of the land claiming the whole of the compensation money, the matter was referred to the District Judge, who found that the lands were originally granted for building purposes, and who allowed a share of the compensation money, *viz.*, the value of the buildings, to the tenants. On appeal to the High Court by the owner of the land, on the ground that the respondents' tenures, which were of a temporary character, having come to an end when the land was acquired by the municipality, the buildings standing on the land became his property, and that the tenants were not entitled to compensation, *Held* that the Judge came to a right finding on the facts, and that the owner of the land was not entitled to the buildings erected by

LANDLORD AND TENANT—continued.

75 MIRASIDARS—continued

OF OLDER RENT *Substantiated* — I. L. R., 3 Bom., 340
NARAYAN

VISHNUDHAT: BABAJI

(I. L. R., 3 Bom., 345 note

579. ———— *Mirasidars*

—Right of occupancy in mirasid land.—The mirasid
dar is the real proprietor of mirasid land, but raiyats
may be entitled to the perpetual occupancy of mirasid
land, subject to the payment of the mirasid's share.
Such tenure, however, generally depends on long-
established usage, and must be proved by satisfactory
evidence. ALAGAIYA THIRUCHITTAMBALLA v. SAMI-
MADA PILLAI . . . 1 Mad., 384

The Civil
dismissed
had not
been made

by such law *not made* —
under cultivation plaintiff's suit was not barred
except as to rent payable more than three years
before suit. KRISHNAMA CHANNAYAR v. TOPPAT GAN-
DAN . . . 3 Mad., 381

on the estates to afford grounds for decision, on
similar estate in the neighbourhood. There has
been no law depriving mirasidars of any privileges
they may have customarily enjoyed. On the other

LANDLORD AND TENANT—continued.

25. MIRASIDARS—continued.

hand, in the regulations the intention of the Govern-
ment is declared to respect the privileges of landhold-
ers of all classes. SAKKAI KAU v. LUTCHMANA
GANDAN . . . I. L. R., 3 Mad., 149

582. ———— Right of occupancy—
Abandonment—Waste lands—Mad. Act II of
1861.—The plaintiffs, village mirasidars, sued to eject
defendant, who is in possession of the waste lands of the

to obtain the lands for cultivation. Lots were ac-
cordingly made out in their names. But on no oc-
casion did they either cultivate or pay kut for the
lots.

the notice in the course they had adopted. The

Held by MORRIS C. J. and HOLLOWAY J., allowing

had been wrongfully dispossessed, that the only act on
would be against the Government for such wrongful
dispossession, and the relief sought in the present
suit was quite incommensurate with the injury com-
plained of. By LINGES J. (dissenting), that plaintiffs,
having lawfully purchased at a Government sale, had
become by the express provisions of the law the
occupiers of the land, and that they could not be
ejected except for the reasons and by the process
prescribed by Madras Act II of 1861, that, not hav-
ing been lawfully ejected, they were still the lawful
holders, and, twelve years not having elapsed
since the date of their rejection, could claim to be
restored, and that the special appeal should

LANDLORD AND TENANT—continued.**24. BUILDINGS ON LAND, RIGHT TO REMOVE AND COMPENSATION FOR IMPROVEMENTS—continued.**

calculated in proportion to the extent to which the estate has been permanently improved. The improvement for which compensation is payable as defined in s. 3 of the Act is not the tree itself, but the work of planting, protecting, and maintaining it. The calculation must not be based on the future produce of the tree. *KUNHI CHANDU NAMBIAR v. KUNKAN NAMBIAR* . I. L. R., 19 Mad., 384

572. — *Malabar Compensation for Tenants Improvements Act (Mad. Act I of 1887), ss. 6 (c) and 7—Tenant's agreement in 1890 not to claim compensation for improvements already made—Reduction of rent—Claim to make deduction from the value of improvements on account of reduction of rent.*—In an ejectment suit relating to agricultural property in Malabar, it appeared that the tenant was in possession under an agreement executed in 1890, in which it was recited that the tenant's father had been let into possession thirty years previously at a certain rate of rent and had made improvements on the land, and the defendant agreed to hold at a lower rate of rent, and not to demand compensation for the previous improvements. The plaintiff relied on the last-mentioned provisions of the agreement, which admittedly related to improvements made since January 1886. *Held* that the provisions relied on by the plaintiff were invalid under the Malabar Compensation for Tenants Improvements Act, 1887, s. 12. *Held also per SUBRAMANIA AYYAR, J. (DAVIES, J., dissenting)*, that there was no reduction of rent or other advantage given by the landlord to the tenant within the meaning of s. 6 (c), and accordingly that the plaintiff was entitled to evict only on payment of the value of improvements free from any deduction. *UTHUNGANAKATH AVUTHALA v. THAZHATHARAYIL KUNHALI*

[I. L. R., 20 Mad., 435]

573. — *Compensation for improvements and arrears of rent set off.*—As regards the right to the value of improvements, there is no distinction between a tenant under a kanom and under a vcrumpattom. The right of the landlord to set off against the value of the improvements any rent due to him must prevail against any alienation made by the tenant of his right to compensation. *ERESSA MENON v. SHAMU PATTAR*

[I. L. R., 21 Mad., 138]

See *ACHUTA v. KAL* . I. L. R., 7 Mad., 545

574. — *Malabar Compensation for Tenants Improvements Act (Mad. Act I of 1887), ss. 4 and 7—Improvements made before and after 1st January 1886.*—Malabar Compensation for Tenants Improvements Act, 1887, s. 7, cannot be construed retrospectively so as to invalidate agreements made with respect to improvements prior to the passing of the Act. In computing, therefore, the value of improvements made by a tenant in Malabar, who was let into possession under an agreement before the passing of the Act, it is

LANDLORD AND TENANT—continued.**24. BUILDINGS ON LAND, RIGHT TO REMOVE AND COMPENSATION FOR IMPROVEMENTS—concluded.**

necessary to ascertain the value of improvements made by him before the 7th January 1887, calculated according to the scales specified in his contract, and also the value of improvements effected subsequently, calculated under the provisions of the Act. *VIRU MAMMAD v. KRISHNAN* . I. L. R., 21 Mad., 149

575. — *Malabar Compensation for Tenants Improvements Act (Mad. Act I of 1887)—Timber trees—Suit to redeem mortgage.*—In a suit to redeem a kanom of land on which timber has grown, the jemmi is not entitled to be credited with half the value of the timber. *ACHUTAN NAYAR v. NABASIMHAM PATTAR*

[I. L. R., 21 Mad., 411]

576. — *Tenant's right to compensation—Mortgage by tenant without notice to landlord—Acceptance of surrender by landlord—Rights of landlord and mortgagee.*—The right of a tenant in Malabar to compensation is analogous to the right to a chose-in-action; and a transfer of such a right by a tenant to a third party cannot affect the landlord unless the latter has notice of the transfer when he accepts the surrender of the property demised and settles the account with his tenant in reference to arrears of rent and the amount due as compensation. *Quare*—Whether notice to a landlord of such a transfer would affect his right to set off arrears of rent due to him against the amount payable as compensation. *VASUDEVA SHENOI v. DAMODARAN* . I. L. R., 23 Mad., 86

25. MIRASIDARS.

577. — *Nature of tenancy—Yearly or permanent tenancy—Right of mirasidars—Custom of country.*—The defendants entered on land as tenants of a mirasidar on terms which they could not prove, but held it at a uniform rent for three generations and for more than fifty years. *Held* that the defendants, in the absence of any special agreement to the contrary, had not acquired by prescription a right of permanent tenancy. Whatever right of permanent tenancy a tenant may, by prescription, acquire as against an inamdar, or a khet, it would be contrary to the custom of the country, and to the nature of mirasi tenure, to hold that he could acquire such a right as against a mirasidar. *NARAYAN VISAJI v. LAKSHUMAN BAPUJI* . 10 Bom., 324

578. — *Right to perpetual tenancy—Sanad—Evidence of title—Perpetual cultivation—Long possession—Local custom.*—Mirasidars who had sanads but who have lost them, and those who never had them, may prove their title by other evidence, and long possession is a strong element in such proof. A sanad is not indispensable to the proof of mirasi tenure. A mirasi right or perpetuity of tenure, like other facts, may be proved by various means. Accordingly, where a plaintiff claimed to hold certain lands in miras and under a right of perpetual cultivation by the custom

LEASE—continued.**1. CONSTRUCTION—continued.**

to afford no ground holding
Nor did the
mean lands en
lands held by the zamindars in their own possession
or their own private lands. **WADOOREN ROSEETI v. MADHOO CHOWDERY** . . . 17 W. R., 404

5. ———— **"Abadkari talukhdari,"**
Meaning of—Effect on talukhdari right of

[8 W. R., 391]

6. ———— **Lease to commence in future—Temporary lease**—An instrument which is in terms a temporary lease is as binding on the lessor, *quod* lease, where the tenancy is to commence at a future day, or on the determination of an existing lease under which another lessee is in possession, as where it commences immediately. **PITCHAKUTTI CHETTI v. KAMALA NAYAKKAN** . . . 1 Mad., 163

7. ———— **Duration of lease—Lease where no term is specified**.—Where no term is mentioned in a lease, it may be either a tenancy terminable at the end of every year, or one for the life of the tenant, according to the terms of the lease. **WATSON v. DOST MAHOMED KHAN** . . . 2 Hay, 4

or his vendee so long as he continues to pay the rent assessed on it. **JUNOORE LALL SANGH v. DEAR** . . . [23 W. R., 399]

8. ———— **Lease for specified term where no provision for continuance is**

minate with the death of the original lessee, but survived during the remainder of the term to his heirs and representatives. The onus is on the party who seeks to show that the transaction should be governed by Hindu law that the *prima facie* construction is contrary to the Hindu law, or the estab-

LEASE—continued.**1. CONSTRUCTION—continued.**

lished custom of considering such contracts in Bengal. In this case the lessor, having, on the death of the lessee, granted a *patti* of his whole estate including the farm in dispute, was adjudged liable to pay to the representatives of the lessee damages for the time they were deprived of the beneficial enjoyment of the farm, according to the increased rent which the new lessee had undertaken to pay. **TEJ CHUND v. SREE KANTIN GHOSH**

[8 W. R., P. C., 48; 3 Moore's L. A., 261]

10. ———— **Construction of lease, as to the inheritance of it by the heir on the lessee's death**.—An *ijara* for one hundred and twenty-five years granted to a wife stated that it was for the performance of pious acts by her, and that on her death her sons were to take. Her only son died before her, leaving a son. Held that the construction that the grandson inherited the term on the death of the lessee was correct. **TEJ CHUND BAHADUR v. SRIKANTH GHOSH**, 3 Moore's L. A., 261, referred to **GOBIND LAL ROY v. JIPENDRA NARAIN ROY CHOWDERY** . . . I. L. R., 17 Calc., 688

11. ———— **Tenancy year by year**—A tenancy which is to continue year by year is a continuing tenancy so long as the parties are satisfied, and though terminable at the option of either party at the end of any year is not *ipso facto* terminated at the end of every year. **MALODDER NOSHTO v. BULLUBBER KANT DHUR** 13 W. R., 190

Besides the fixed amount there will be no oppression on account of cesses," do not create a permanent tenancy, but only a tenancy from year to year. **GUNGABAI v. KALAPA DARI MURRYA**

[I. L. R., 8 Bom., 419]

13. ———— **Lease from year**

were not registered. The first after reciting that the executant had taken the land from the plaintiff on a specified yearly rent, and promised to pay the same

plaintiff on a yearly rent specified for six years, and promised to pay the same year by year, proceeded thus "And if the said Shaikh wishes to have the land vacated within the said term he shall first give us fifteen days' notice, and we will vacate it without objection." The lower Courts held that the *shukhsats* were not admissible in evidence, as they

LANDLORD AND TENANT—concluded.**25. MIRASIDARS—concluded.**

accordingly be dismissed. *FAKIR MUHAMMAD v. THIRUMALA CHARIAR*. I. L. R., 1 Mad., 205

583. ——— **Pottah-holder, Status of—**
Raiyatwar pottah.—The correctness of the decision of the majority of the Full Bench in *Fakir Muhammad v. Thirumala Chariar*, I. L. R., 1 Mad., 205, that a raiyatwar pottah endures only for a year, and that a pottah-holder is merely a tenant from year to year, questioned. *SECRETARY OF STATE FOR INDIA v. NUNJA*. I. L. R., 5 Mad., 103

584. ——— **Relinquishment of pottah**
Tenure of pottahdar under Government.—*Per TURNER, C.J.*—A mirasidar does not lose his mirasi right by relinquishing his pottah. A pottah issued by Government will, unless it is otherwise stipulated, be construed to endure so long as the raiyat pays the revenue he has engaged to pay. *SUBBARAYA MUDALI v. COLLECTOR OF CHINGELPET* [I. L. R., 6 Mad., 303

LANDMARKS.**Obliteration of—**

See ACCRETION—NEW FORMATION OF ALLUVIAL LAND—GENERALLY.
[9 B. L. R., 150

LAW, IGNORANCE OF—

See DIVORCE ACT, s. 14.
[I. L. R., 20 Bom., 362

LAW OFFICERS.**Remuneration of—**

See COSTS—TAXATION OF COSTS.
[I. L. R., 17 Mad., 162

LAWS LOCAL EXTENT ACT (XV OF 1874), ss. 3, 4.

See CRIMINAL PROCEEDINGS.
[I. L. R., 13 Mad., 353

LEASE

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- | | |
|------------------------|------|
| 1. CONSTRUCTION | 4644 |
| 2. ZUB-I-PESHGIR LEASE | 4666 |

See CASES UNDER KADULIAT.

See CASES UNDER LANDLORD AND TENANT.

See CASES UNDER REGISTRATION ACT, s. 17, CL. (d).

See STAMP ACT, 1879, SCH. II, ART. 13.

[I. L. R., 6 Bom., 691
I. L. R., 5 All., 360
I. L. R., 15 Bom., 73
I. L. R. 18 Bom., 546

LEASE—continued.**Agreement for—**

See REGISTRATION ACT, s. 17.

[3 B. L. R., Ap., 1
7 B. L. R., Ap., 21
10 W. R., 177
12 W. R., 394
17 W. R., 509
I. L. R., 10 Bom., 101
I. L. R., 7 Calc., 703, 708, 717
I. L. R., 9 Calc., 865
21 W. R., 315 : I. L. R., 1 I. A., 124

See STAMP ACT, 1879, SCH. I, ART. 4.

[I. L. R., 17 Calc., 548
I. L. R., 17 Mad., 280

See STAMP ACT, 1879, SCH. I, ART. 5.

[I. L. R., 13 Bom., 87

Breach of condition for forfeiture in—

See CASES UNDER BENGAL RENT ACT, 1869, s. 52 (ACT X OF 1859, s. 78).

See CASES UNDER LANDLORD AND TENANT—FORFEITURE—BREACH OF CONDITIONS.

Cancellation of—

See CASES UNDER BENGAL RENT ACT, 1869, s. 52 (1857, s. 78).

See CO-SHARERS—SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—RENT. I. L. R., 4 Calc., 98

granted while lessor is out of possession.

See CASES UNDER TRANSFER OF PROPERTY.

1. CONSTRUCTION.

1. ——— Rule for construction—*Nature of possession given by lease.*—In construing a pottah, although such construction was according to the practice of the Court on a question of law, the Court held that it must look to the surrounding circumstances, one of which was the nature of the possession given by the grantor and accepted by the grantee. *JANAKEE NATH DUTT v. MAHOMED ISRAEL* [22 W. R., 285

2. ——— Uncertainty as to amount of rent—*Madras Rent Recovery Act, s. 4.*—An agreement in a pottah to pay whatever rent the landlord may impose for any land not assessed, which the tenant may take up, is bad for uncertainty. *RAMA-SAMI v. RAJAGOPALA*. I. L. R., 11 Mad., 200

3. ——— “Projah,” Meaning of—*Status of tenant.*—The word “projah” does not define the status of a tenant. *KEDARNATH MITTER v. SOO-KOOMAREE DEBIA*. 22 W. R., 398

4. ——— “Karindah,” Meaning of—*“Nij-jote,” Meaning of—**Status of tenant.*—The word “karindah,” as used in a pottah, was held to be merely a term used to set forth what was the status of the person to whom the pottah was granted, and

LEASE—continued

1 CONSTRUCTION—continued.

of 1865 operated to make a tenancy established by ordinary purchase and muchalka of a permanent nature

20 ———— Lease of jungle lands—

Continuous possession—Commencement of lease.—

In a lease which provided for rent free possession for twelve years, the rent free possession contemplated

years. BHARAT CHUNDER ROY v. ISSRA CHUNDER SINGH. 3 W. R., Act X, 78

21. ———— Death of lessee, Effect of—

Lease not limited to life of lessee—Any leasehold estate, when not expressly limited to the life of the lessee, passes to his heirs in the same way as other property, and if the heirs take the estate of the deceased lessee, they take it with all its rights and responsibilities. DAKOOLAH v. AMANTOOLAH

[18 W. R., 147

RADHA KISHORE ROY v. SITTOO SINGH

[34 W. R., 172

22. ———— Lease at will of

lessee—A lease of land, whereby the lease is given the power of holding the land as long as he pleases, is determined by the death of the lessee. YAMAY SHRIDAS v. MAKI

I. L. R., 4 Bom., 424

to be several, but equal in extent. HADIRATH v. BHAYAN LAL

I. L. R., 5 All., 191

monthly rent till call for to vacate does not extend the term for which the lease is granted. MORA VITHAL v. TUKARAM VALAD MALHARI

[5 Bom., A. C., 82

23. ———— Tenancy at will—Agreement

to pay rent—Custom—Notice to quit—An agreement to pay rent in the ordinary form of muchalka

LEASE—continued.

1. CONSTRUCTION—continued.

given by tenants from year to year already in possession is not a lease. A tenancy from Fall to Fall is not a tenancy at will, but a tenancy from year to year. In the absence of custom to the contrary, no tenant from year to year in this country can be ejected without being served at a reasonable time beforehand with a notice to quit at the period of the year at which the tenancy commenced. AMULLA RAJESWAR v. PAKKIRI MOHAMMED RAJESWAR

[I. L. R., 3 Mad., 310

23. ———— Suit for ejectment.

Disputes arose between the Government and an adjacent proprietor, M. S., respecting a piece of alluvial land gained by accretion, of which M. S. was then in possession. The Government required the land for public improvements. After a mere correspondence an agreement was entered into by which M. S. undertook to relinquish in favour of Government all claim to the proprietary right, and to rent the land from Government, upon the latter allowing him to remain in possession until the projected public improvements rendered it necessary for him to vacate the land. Possession was given to Government, M. S. holding the land from Government at a fixed rent and undertaking to quit possession at a month's notice. Improvements in the neighbourhood having been made by Government and M. S. being dead, notice to quit was served on his representatives, who refused to quit, on the ground that the improvements were not such public improvements as were contemplated by the correspondence and agreement. In a suit for ejectment.—Held that M. S. was, under the agreement, a mere tenant at will, and that the suit was maintainable, and the representatives of M. S. had no defence to the action. ANUNDOHET DOSEER v. DOSEER EAST INDIA COMPANY

[8 Moore's L. A., 13. 1 W. R., P. C., 61

get her husband to live in her house, she might continue to hold the land. She afterwards remarried, and held the land till her death. In an action brought by the second husband to recover possession of the land, as the heir of his wife.—Held (reversing the decrees of both the Courts below) that the plaintiff had no right to recover possession and his wife had merely a personal interest in the holding which ceased upon her death. KAMALUNDIR HUSEY KHAN v. BHUKA MANJI

4 Bom., A. C., 49

28. ———— Provision for renewal.—Suit for possession.—Stipulation as to duration.—Where upon a consideration of the terms set forth in the

to be a stipulation (its conclusion) to upon assessed

the quantity and rents being —

LEASE—continued.

1. CONSTRUCTION—continued.

registration under s. 17 (1) of the Registration Act VIII of 1871, being 1 year of immovable property from year to year or reserving a yearly rent. *Held* that the two mukthas created no rights except those of tenancy, inasmuch as the clause referred to both to the effect that at any time at the will of the lessor the lessor was to give up the land at fifteen days' notice, covering all the previous clauses, and the defendants could be asked to quit at any time before the lapse of the term a fifteen days' notice. *KUNDA BHANU S. S. v. S. M. I. L. R., 8 All., 403*

14. ————— *Right of occupancy—Permanent collector—Pecuniary.*—The defendants' ancestors or predecessors in title were the cultivating tenants of the lands of a certain temple from a date not later than 1827, in which year they were registered in the panchai accounts. In 1830 they executed a muchalka to the Collector, who then managed the temple, whereby they agreed among other things to pay certain dues. They were described in the muchalka as *perpetual*. In 1857, the plaintiff's predecessors took over the management of the temple from and executed a muchalka to, the Collector, whereby he agreed, among other things, not to eject the tenants as long as they paid list. In 1862 the dues (which were payable separately), having fallen into arrear, the manager of the temple and to eject the defendants. *Held* that there was nothing to show that the defendants were more than tenants from year to year. *Chockalinga Pillai v. Vythalinga Iyadurai Sunnady, 6 Mad., 161, and Krishnasami v. Paridargal, I. L. R. 3 Mad., 315, discussed and distinguished. THIRATHAJA v. GITANA SAMBANDHA PANDARA SUNNADY*

[I. L. R., 11 Mad., 77]

15. ————— *Permanent ijara lease—Right of heirs of demise.*—A fixed permanent ijara pottah confers no rights on the heirs of the demise. *RAJARAM v. NARASINGA*

[I. L. R., 15 Mad., 199]

16. ————— *Perpetual tenancy.*—Where the terms of a lease did not appear to create a perpetual tenancy, there being no circumstances in the evidence from which the Court ought to infer that the intention of the parties was to create such a tenancy. —*Held* that the lease was not a perpetual lease. *Ganguli v. Kalapa, I. L. R., 9 Bom., 419, and Gangadhar Bhikaji v. Mahadu, P. J. for 1889, p. 321, referred to. RAMARAI SAHEB PATWARDHAN v. BABAJI* . . . I. L. R., 15 Bom., 704

17. ————— *Pottah prescribing rent to be paid permanently by tenant.*—In 1810 a mittadar granted to a tenant a pottah for certain land in which the tenant had already a heritable estate, fixing the rent at the reduced rate Rs. 10. The document provided "this sum of Rs. 10 you are to pay perpetually every year per kistbandi in the mitta ratcheri." It appeared that the rent fixed was less than what was payable upon the lands previous to the date of the pottah and also less than that payable upon neighbouring lands of similar quality and description. *Held* that the facts of the case were

LEASE—continued.

1. CONSTRUCTION—continued.

distinguishable from those of *Rajaram v. Narasinga, I. L. R. 15 Mad., 199*, and that the pottah fixing the rent was binding up on the representatives in title of the grantor and the grantee, respectively. *FOURKES v. MURUGAM GOUDAN I. L. R., 21 Mad., 503*

18. ————— *Permanent tenancy only revocable by revision of rent—Right of ejectment—Exclusion of lessor's right of termination of lease.*—Ejectment by landlord against tenant. It appeared that the land in dispute was the property of a muttam of which the plaintiff was the trustee, and had been let to the defendant's father under a muchalka (Exhibit A), dated 14th August 1837, entered into with the Collector, the manager of the property on behalf of the Government. The tenancy continued to be regulated by his agreement until plaintiff, in 1857, demanded an increased rent, which the defendant refused to agree to pay. Upon that demand and refusal the plaintiff, at the end of the Fasli, and without tendering a pottah for another Fasli stipulating for the increased rent, brought his suit to eject. The defendant appellant contended that the right to put an end to his tenancy was conditioned upon his failure to pay the rent fixed by the agreement. *Held* by SCOTLAND, C.J., upon the construction of the muchalka, that the plaintiff possessed the absolute right to put an end to the tenancy at the end of the Fasli, unless the condition relied upon by the appellant was by force of established general custom (which had not been alleged) or positive law made a part of the contract of tenancy; that neither the Rent Recovery Act nor the Regulations operated to extend a tenancy beyond the period of its duration secured by the express or implied terms of the contract creating it, and that therefore the plaintiff had a right to eject the defendant at the end of a Fasli. By *HOLLOWAY, J.*—That whether the express contract was binding on the pageda or not, it gave no right to hold permanently, and that there is nothing in any existing written law to render a tenancy once created only modifiable by a revision of rent, but not terminable at the will of the lessor exercised in accordance with his obligations. *Enaimanaram Venkayya v. Venkatanarasayana Reddi, 1 Mad., 75, and Nallatambi Pattar v. Chinnaaleynarayana Pillai, 1 Mad., 109* doubted. The judgment in the case of *Venkatanamunier v. Ananda Chetty, 5 Mad., 122*, has gone too far in laying down the rule as to a pottahdar's right of occupation. *CHOCKALINGA PILLAI v. VYTHEALINGA PUNDARA SUNNADY* . . . 6 Mad., 164

19. ————— *Permanent tenancy on continuing to pay rent.*—Suit to recover the proprietary right in a village belonging to plaintiff's muttah, which was let to defendant's father under a pottah and muchalka, and which on the death of her father and since the defendant refused to surrender, upon the grounds (1) that the right had been leased permanently, subject to the regular payment of the stipulated rent, which condition had been strictly fulfilled; (2) that her father had expended large sums in making substantial permanent improvements in the village, and that he had by gift transferred the tenancy to her. *Held* that, on the true

LEASE—continued

1 CONSTRUCTION—continued

the full assessment and no more. COLLECTOR OF COLABA : GONESH MORESHVAR MEHENDALE

[10 Bom, 216

39 ————— "Talukh," Mean

ing of—The word "talukh" imports a permanent tenure, and where a chitta describes the land to which it relates as a "talukh," the presumption, in the absence of any evidence to the contrary, is that it implies a permanent interest. KRISHNA CHUNDER GOOPTA : MEEB SAIDUR ALI 22 W. R., 326

[Agra, F B, 52 Ed. 1874, 39

41. ————— Mokurari istem

rari—Hereditary right—The words "mokurari istemrari" contained in a pottah must be taken in themselves to convey an hereditary right in perpetuity. LAKHU COWAR : ROY HARI KRISHNA SINGH 3 B. L. R., A C, 326 12 W. R., 3

MUNIRUNJUN SINGH : MELANUND SINGH

[3 W. R., 84

I MELANUND SINGH : MONORUNJUN SINGH

[5 W. R., 101

42. ————— Mokurari is

temrari—Quere—Whether in the absence of any usage, the words "mokurari istemrari" mean permanent during the life of the grantee, or permanent as regards hereditary descent. MELANUND SINGH : MONORUNJUN SINGH 13 B. L. R., 124

[L R., I A, Sup Vol, 181

43. ————— Perpetual lease

to year In case of flood or drought you will be allowed a reduction of rent according as such reduction will be allowed to others. Pothu Hari Chuckerbutty assents. A subsequent purchaser of the zamindari right obtained a fresh settlement of the zamindari under Government. The son and grandson of the grantee held successively under the lease. In a suit by the zamindar against the holder for enhancement of rent—Held that the pottah was a hereditary lease fixing the rent in perpetuity, and that it was binding on the representatives of the grantor. RADUNAKAR MAHATI : NILADHRO CHOWDHRY

[5 B. L. R., 652 14 W. R., 107

44. ————— Mokurari—

Words of inheritance—In 1798 a mokurari pottah of a portion of a zamindari was granted to A at a consolidated jama of Rs 60 for the term of four years,

LEASE—continued

1 CONSTRUCTION—continued

and at a uniform rent of Rs 25 from the expiration of

petuity The use of the word "mokurari" alone in a lease raises no presumption that the tenure was intended to be hereditary and therefore, in order to decide whether a mokurari lease is hereditary, the Court must consider the other terms of the instrument under which it is granted the circumstances under which it was made, and the intent on of the parties. SHEO PERSHAD SINGH : KALLY DASS SINGH

[I L R., 8 Calc., 543 5 C L R., 138

way,—e.g., by the other terms of the instrument, its objects, the circumstances under which it was made, or the conduct of the parties to it. Held also that such intention was not shown. BILASMOI DAS : SHEOPERSHAD SINGH

[I L R., 8 Calc., 864 L R., 9 I A, 33

11 C L R., 215

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containing any words importing an hereditary interest. Held that the above circumstances were no ground for declining to give effect to the pottah as it stood, the word "mokurari" not importing inheritance. PARNESWAR PERTAB SINGH : PADMANAND SINGH

[I L R., 15 Calc., 342

46. —————

Meaning of the words "istemrari mokurari" in connection with grant of lands—Intention of parties—The words

LEASE—continued.**1. CONSTRUCTION—continued.**

in accordance with the productive power of the land, —*Held* that the plaintiff was entitled to a decree for khas possession, the stipulation being extremely uncertain in its character, and the defendants having done nothing for years in response to the proceedings taken by the plaintiff. **SHOORUT SOONDY DABEE v. BINNY (JARDINE, SKINNER & Co)**

[25 W. R., 347]

29. — Nature of grant—Intention of parties—Estate for life or inheritance.—In order to determine the question whether a pottah granted by a zamindar conveyed an estate for life only or an estate of inheritance, —*Held* that it was necessary to arrive, as well as could be done, at the real intention of the parties, to be collected chiefly from the terms of the instrument, but to a certain extent also from the circumstances existing at the time, and further by the conduct of the parties since its execution. **WATSON & Co. v. MOHESH NARAIN ROY**

[24 W. R., 176]

30. — Words conveying right to hold at fixed rates.—It is not absolutely necessary that any particular form of words should be used in conveying rights to hold at fixed rates. **UNODA PERSHAD BANERJEE v. CHUNDER SEKHUR DEB**

7 W. R., 394

AFSAR MUNDUL v. AMEEN MUNDUL

[8 W. R., 502]

KAILAS CHANDRA ROY v. HIRALAL SEAL. FAKIR CHAND GHOSE v. HIRALAL SEAL

[2 B. L. R., A. C., 93; 10 W. R., 403]

31. — Hereditary lease—Continuance of lease dependent on continuance of superior tenure.—Though the lease in this case contained no words importing an hereditary character, yet it was held to have the effect of being hereditary, on the ground that the period of its continuance was not dependent on the life of any party, whether lessor or lessee, but on the continuance of the superior tenure. **LEKRAJ ROY v. KANHYA SINGH**

17 W. R., 485

32. — Pottah for building purposes—Omission of words defining grant.—A pottah which gave land for building purposes and recited that no abatement of rent was to be granted at any time or for any cause, and that no increase of jama should ever be demanded, was held distinctly to provide that the land was granted at the rate then fixed for ever, even though no such words were used as "istemrari" or "ba-furzundan." **BINODE BHARJY ROY v. MASSEYK**

15 W. R., 494

33. — Absence of words of inheritance in pottah.—A pottah must not, *prima facie*, be assumed to give an hereditary interest, though it contains no words of inheritance; "pottah" as used in Act X of 1859 being a generic term, which embraces every kind of engagement between a zamindar and his under-tenants or raiyats. Where proof exists of long uninterrupted enjoyment of a tenure, accompanied by recognition of its hereditary and transferable character, it is sufficient to supply the want of the words "from generation to generation"

LEASE—continued.**1. CONSTRUCTION—continued.**

in the pottah, and the tenant cannot be dispossessed by his superior. **DHUNPUT SINGH v. GOOMUN SINGH**

[9 W. R., P. C., 3; 11 Moore's I. A., 433]

34. — Absence of words fixing rent—Lease for building purposes.—Where a pottah recited that the rent was to be paid from father to son, who were to occupy the land and build a house thereon, although there were no formal words to the effect that the rent was never to be changed, the fixed character of the rent was presumed from long and uninterrupted enjoyment and the descent of the tenure to the present occupant. **PEARSEE MOHUN MOOKERJEE v. RAJ KRISTO MOOKERJEE**

[11 W. R., 259]

35. — Istemrari—Hereditary tenure.—Where, by an old pottah, lands forming part of a zamindari had been leased at a specified rent, but there were no words in the pottah importing the hereditary and istemrari character of the tenure, —*Held* that the absence of such words was supplied by evidence of long and uninterrupted enjoyment, and of the descent of tenure from father to son, whence that hereditary and istemrari character might be legally presumed. **SATYA SARAN GHOSAL v. MAHESH CHANDRA MITTER**

[2 B. L. R., P. C., 23; 12 Moore's I. A., 63]

11 W. R., P. C., 10]

DEEN DYAL SINGH v. HEERA SINGH

[2 N. W., 338]

36. — Long uninterrupted enjoyment—Onus probandi.—To rebut the evidence afforded by long uninterrupted enjoyment, and the descent of the tenure from father to son, it lies upon the party asserting the holding to be from year to year only and determinable at will to prove such assertion. **DEEN DYAL SINGH v. HEERA SINGH**

[2 N. W., 338]

37. — Although a pottah purported to be a grant only to the particular person to whom it was made, yet as it passed from father to son, and son to grandson, and possession was taken under it and continued from between 75 and 80 years, and the pottah did not contain any word or expression barring inheritance or transfer, —*Held* that the tenure might fairly be presumed to be hereditary. **NUBO DOORGA DOSSIA v. DWARKA NATH ROY**

[24 W. R., 301]

38. — Assessment, Right of—Assessment in perpetuity.—Where a lease of lands to be reclaimed from the sea by the lessee, granted by a former Government to plaintiff, stipulated that the lands should be held free of assessment (muafi) for thirty years subject to assessment at R1 per bigha in the thirty-first year, to assessment increasing at the rate of $\frac{1}{4}$ of a rupee per bigha during the six following years, and at the expiration of that istawa (period of annually increasing assessment) should be held at the full assessment of R3 per bigha, —*Held* that, after the expiration of the first thirty-seven years, the lease was one in perpetuity, subject to the annual payment of the sum named as

LEASE—continued

1. CONSTRUCTION—continued.

the full assessment and no more. COLLECTOR OF
COLANA v. GONESH MORESHVAR MENONDALE

[10 Bom., 216]

39. ———— "*Talukh*," Mean-
ing of.—The word "*talukh*" imports a permanent
tenure, and where a *chitta* describes the land to which
it relates as a "*talukh*," the presumption, in the
absence of any evidence to the contrary, is that it
implies a permanent interest. KUNINDO CHUNDER
GOPTO v. MEER SAFFUR ALI 22 W. R., 326

40. ———— Meaning of *to*
bahali bundobust sircar—A *pottah*, under the ordi-
nary meaning of the words "*to bahali bundobust*
sircar," was to endure as long as the settlement
ODIT NARAIN v. MOHESHWAR BAI SINGH

[Agra, F. B., 52 Ed. 1874, 39]

41. ———— "*Mokurari sircar*,"
rari—Hereditary right.—The words "*mokurari*
sircar" contained in a *pottah* must be taken in
themselves to convey an hereditary right in perpe-
tuity LAKSHU COWAR v. ROJ HARI KRISHNA
SINGH 3 B. L. R., A. C., 226. 13 W. R., 3

MURRUMJUN SINGH v. LELANAND SINGH

[3 W. R., 84]

LELANAND SINGH v. MONORUMJUN SINGH

[5 W. R., 101]

42. ———— "*Quare*—Whether, in the absence of any
temurari," "*Quare*—Whether, in the absence of any
44. ———— "*Covenant*,"

a new lease—Subsequent lease without covenant
for renewal—Held by the Court of first instance,
and confirmed on appeal, that a covenant in a lease
for years to grant a new lease on the expiration of the
existing term under and subject to all covenants, as
in the first lease contained, is satisfied, if such new
lease contain the like covenants as the former lease,
except the covenant for renewal PENINSULAR AND
ORIENTAL STEAM NAVIGATION COMPANY v. KON-
NOYALL DUTT 2 Hyde, 21

55. ———— Stipulation to renew lease
—*Re-letting*—*Holding over*—Where a *kababhat*
stipulates that *A*, the tenant, shall not, on the expiry
of his lease, be liable to pay a rent higher than that

land to *A* at the close of the term of the lease Held
also that the fact of his allowing the tenant to hold
over did not affect the landlord's right to resume pos-
session after due notice. KUNDEBOONISSA BAGUM v.
CHUNDER MOYEE DOSSEN 12 W. R., 539

56. ———— Covenant for renewal—
Ambiguous covenant—Right to remove soil and
open mines—Interpretation by acts of the parties—

LEASE—continued

1 CONSTRUCTION—continued.

under which it is granted, the circumstances under
which it was made, and the intention of the parties.
SHRO PERSHAD SINGH v. KALLU DASS SINGH

[I L. R., 5 Calc., 548; 5 C. L. R., 138]

of inheritance On the death of schedule to the

of the lease *Quare*—Whether the acts of the parties

might have worked in the absence of such words
To allow the opening of new quarries or mines, an ex-
press power to that effect must be given. Held also
that the Secretary of State was not estopped by the
indenture of May 10th, 1870, from disputing the
claimant's right to remove the soil and stones. The
claimant's position had not been altered so as to make
it inequitable in the Secretary of State now to assert
his claims under the lease. Held also that the man-
dure of May 10th, 1870, did not operate as a fresh
demise of the premises in their condition at the date
of the indenture. A confirmation does not create
as to make the estate confirmed in respect of the
demise which it would have had if confirmed in the con-
dition at the date of the confirmation. I. L. R., 7 Bom., 138

LEASE—continued.**1. CONSTRUCTION—continued.**

in accordance with the productive power of the land, —*Held* that the plaintiff was entitled to a decree for khas possession, the stipulation being extremely uncertain in its character, and the defendants having done nothing for years in response to the proceedings taken by the plaintiff. **SNOOKT SOONDY DABE v. BINNY (JARDIN, SKINNER & Co.)**

[25 W. R., 347]

29. — Nature of grant—Intention of parties—Estate for life or inheritance.—In order to determine the question whether a pottah granted by a zamindar conveyed an estate for life only or an estate of inheritance, —*Held* that it was necessary to arrive, as well as could be done, at the real intention of the parties, to be collected chiefly from the terms of the instrument, but to a certain extent also from the circumstances existing at the time, and further by the conduct of the parties since its execution. **WATSON & Co. v. MOHESH NARAIN ROY**

[24 W. R., 178]

30. — Words conveying right to hold at fixed rates.—It is not absolutely necessary that any particular form of words should be used in conveying rights to hold at fixed rates. **UNODA PERSHAD BANERJEE v. CHUNDER SEKHUR DEB**

7 W. R., 394

AFSAR MUNDUL v. AMEEN MUNDUL

[3 W. R., 502]

KAILAS CHANDRA ROY v. HIRALAL SEAL. FAKIR CHAND GHOSE v. HIRALAL SEAL

[2 B. L. R., A. C. 93; 10 W. R., 403]

31. — Hereditary lease—Continuance of superior

resume the land. —*Held* that on continuance of superior the land in any case contained in these few words by way of character, of one may be used when needed. —*Held* that the possession of the lessors, his heir, who was the subject of the lease, claimed to be the lessee of a moiety thereof on the ground that the lease was one creating a heritable interest. The claim was allowed by the Settlement officer, and the lessor thereupon brought a suit to have it declared that he was entitled to eject the defendant, under s. 36 of the N.-W. P. Rent Act (XII of 1881), as being a tenant-at-will, and to set aside the Settlement officer's order. *Held* that the mere use of the word "istemrari" in the instrument did not *ex vi termini* make the instrument such as to create an estate of inheritance in the lessee; that the words "so long as the rent is paid I shall have no power to resume the land" did not show any meaning or intention that the lease was to be in perpetuity; and that the defendant (even should he be the legal heir and representative of one of the lessees) should not resist the plaintiff's claim. **Tulshi Pershad Singh v. Ramnarain Singh, L. R., 12 I. A., 205, followed. Lakhu Kowar v. Hari Krishna Singh, 3 B. L. R., 226, dissented from. GAYA JATI v. RANJIAWAN RAM**

[I. L. R., 8 All., 569]

43. — Lease containing words of inheritance not inalienable—Khoti Act (Bom.) I of 1880, s. 9.—The khots of the village of A in 1854 leased certain land to B by a lease which declared that "you (B) are to enjoy, you and your sons, grandsons, from generation to generation." The

LEASE—continued.**1. CONSTRUCTION—continued.**

in the pottah, and the tenant cannot be dispossessed by his superior. **DIUNPUT SINGH v. GOOMUN SINGH**

[9 W. R., P. C., 3; 11 Moore's I. A., 433]

34. — Absence of words fixing rent—Lease for building purposes.—Where a pottah recited that the rent was to be paid from father to son, who were to occupy the land and build a house thereon, although there were no formal words to the effect that the rent was never to be changed, the fixed character of the rent was presumed from long and uninterrupted enjoyment and the descent of the tenure to the present occupant. **PEAREE MOHUN MOOKERJEE v. RAJ KRISTO MOOKERJEE**

[11 W. R., 259]

35. — Istemrari—Hereditary tenure.—Where, by an old pottah, lands forming part of a zamindari had been leased at a specified rent, but there were no words in the pottah importing the hereditary and istemrari character of the tenure, —*Held* that the absence of such words was supplied by evidence of long and uninterrupted enjoyment, and of the descent of tenure from father to son, whence that hereditary and istemrari character might be legally presumed. **SATYA, SABAN GHOSAL v. MAHESH CHANDRA MITTER**

[2 B. L. R., P. C., 23; 12 Moore's I. A., 63; 11 W. R., P. C., 10]

DEEN DYAL SINGH v. HEERA SINGH

[2 N. W., 338]

36. — Long uninterrupted enjoyment—Onus of proof.—What is really conveyed is not evidence afforded by what is really conveyed is not evidence of the area of the land, but its boundaries. **CHUNDER MAHNEER v. BROJONATH ADITYA**

[14 W. R., 301]

51. — Ascertainment by measurement—Provision for rate of rent.—Plaintiff let to defendant a quantity of land, of which he was not certain how much was in cultivation and how much was jungle, at a total jama to be eventually settled on the footing of 12 annas per bigha cultivated, and 10 annas per bigha jungle, on the number of bighas of each sort which existed at the end of the year next preceding the date of the pottah, the calculation of the rent to be made permanently by effecting a measurement within six months, until which time defendant should pay a provisional jama, at 12 annas a bigha on a given number of bighas, amounting to a specified sum. Plaintiff sued for arrears of rent, no measurement having taken place, although years had elapsed. *Held* that, until ascertainment by measurement of a settled jama, the rent due under the terms of the pottah would be the provisional sum mentioned above; but if the delay in such ascertainment were due to default of plaintiff, defendant would be entitled to set up the state of things which he believed would be arrived at if measurement were effected. **BHARUTH CHUNDER ROY v. BEPIN BEHAREE CHUCKERBUTTY**

[9 W. R., 495]

52. — Excess land, Rent enquiry.—B having covenanted to take from A without enquiry 18 bighas of land at a rent of R1 a bigha,

LEASE—continued**1 CONSTRUCTION—continued**

temple upon payment of the curcar tiva and a

by virtue of the subsequent order of the Government **TAKSIKAM IYENGAR v. GANAPATHY IYER** 4 Mad., 320

65 — Fishery pottah *Deprivation*

to a refund of rent from the time that possession of the subject of the lease was taken away by order of a competent Court, from his lessor and consequently from him **RAM GOPAL DEVI v. ALLUM MULLICK** [7 W R., 405]

63 — Stipulation in lease for conversion of dry land into wet land *Stipula*

tion is in accordance with local custom. **DATTAPPA PILLAI v. RAMAN CHETTI** I L R., 17 Mad., 1

AYYAN v. MATHAN I L R., 17 Mad., 98

68 — Payment of rent—*Provision*

amount in arrears the Court held that the Judge below was not correct in his construction of the pottah that the dar patnidar was not bound to pay rent in equal monthly instalments nor liable to interest if he did not so pay it **BYRUB CHUNDER BANERJEE v. AKERBOODEN** 17 W R., 173

69 — Payment by instalments—It is contrary to usage to pay by monthly instalments unless there is a special agreement to that

LEASE—continued**1 CONSTRUCTION—continued**

effect **JOY KISHEN MOOKERJEE v. JANKES NATH MOOKERJEE** 17 W R., 471

70 — Proviso for re-letting in case of default in payment of rent *Lease is perpetually*—A lease purporting to be for a certain term of years contained a proviso that if at any time the lessee should make default in payment of rent the lessor should be at liberty to let the lands to another lessee. *Held* that the introduction of this

[Marsh., 250 2 Hay, 14]

71 — Proviso for default in pay-

lessor to rescind the lease that he should have appointed a *szawal* **I AL LUTCHMEE PERSHAD v. BHODHUN SINGH** Marsh., 474

entry without expressly mentioning the mode of effecting it the lessor was bound to exercise this power according to the provisions of the law **Act X of 1859 SOLANO v. HOORNUT BAHADOOR** [1 Hay, 573]

[5 W R., Act X, 17]

74 — *Conditional*

[W R., 1884, 323]

75 — *Hereditary*

LEASE—continued.

1. CONSTRUCTION—continued.

57. ————— *Kabuliat, Construction of—Stipulations as to rent of new chur—Hawaladari tenure—Measurement and assessment of chur land—Landlord and tenant—Beng. Act VIII of 1869, s. 14.*—A kabuliat, executed by the tenant of land held in hawala tenure, provided that on an adjoining chur becoming fit for cultivation the whole land, old and new, held by the tenant should be measured, and the old having been deducted from the total, rent should be paid for the excess land at a specified rate up to five drones, and for any more at the prevailing pergunnah rates. It provided also that either (a) rent should be realized according to law with interest thereon; or that (b) at the close of the year the owner should, by a notice served on the hawaladar, require him to take a settlement of the excess land, and within fifteen days to file a kabuliat, or (c) the excess land might be settled with others. Such a chur having been formed, the zamindar measured without notice to, and in the absence of, the hawaladar. He then served a notice on the latter requiring him to execute a kabuliat within fifteen days for payment of a fixed rent upon the excess land as found by the measurement, or to yield up possession. Disregard of this led to a suit in which the zamindar claimed either khas possession or rent on measurement by order of Court. *Held* that neither the kabuliat nor the terms of s. 14 of Bengal Act VIII of 1869 precluded a suit for assessment of the rent upon measurement; nor did the absence of authentic measurement as prescribed by the kabuliat have that effect, or affect the measurement by the Amin; but that, until both the measurement and the assessment of the rent had taken place (which might be either in the manner prescribed or by judicial termination) the zamindar could not put the hawaladar to his choice between (b) executing a kabuliat for the rent and (c) yielding up possession. *RAMKUMAR GHOSE v. KALIKUMAR TAGORE*

[I. L. R., 14 Calc., 99

L. R., 13 I. A., 116

58. ————— *Provision for indigo concern passing into hands of others—Assignment of lease from two joint lessees to one of them.*—N and D, having taken a lease of certain lands, jointly give a kabuliat, agreeing that if within the term of the lease they die, or if in any other way the concern passed into the hands of others, then their heirs, or those who would succeed to their rights, would pay the rent. After the kabuliat was given, N made over his interest in the lease to D. *Held* that, in passing from N and D to D alone, the lease had passed into the hands of "others" within the meaning of the kabuliat, and that D occupied the position of the persons contemplated by the terms "those who will succeed to our rights." *BHOBANEE CHUNDRA MITTER v. MAONAIR*

10 W. R., 464

59. ————— *Joint lease—Joint liability for rent.*—When a lease is granted jointly to two tenants, both are jointly liable for the rent due under the lease, and one of them cannot divide this joint liability. *JOGENDRA DEB ROY KUR v. KISHEN BUNDRHO ROY*

7 W. R., 272

LEASE—continued.

1. CONSTRUCTION—continued.

ROOPNARAIN SINGH v. JUGGOO SINGH

[10 W. R., 304

BHOLANATH SIRCAR v. BAHARAM KHAN

[10 W. R., 382

GOUR MOHUN ROY v. ANUND MUNDUL

[22 W. R., 295

60. ————— *Definition of right of each lessee in pottah—Separation of tenures.*—The fact that at the foot of a pottah the right of each lessee was defined was held not to bind the lessor to recognize each part as an independent and separate tenure, and the subsequent separate payments of rents by the tenants was held not to vary the nature of the tenure. *BULORAM PAUL v. SULOOP CHUNDER GOORO*

21 W. R., 256

61. ————— *Lease of jungle lands—Suit alleging interruption of lease to cut trees, etc.—Form of lease.*—Where an application for a lease for farming jungle lands was in its nature general, but the answer was specific and clear, and granted the lease on certain conditions, the answer determined the contract, and was the only contract between the parties. A lessee who sues, alleging that there has been an interruption to his lease to cut or sell the trees on the land included therein, must base his right, first, upon its being a necessary incident of the lease by reason of the objects of the lease; or, secondly, under some positive law; or, thirdly, under some custom to be incorporated in the lease; or, fourthly, under the express terms of the lease. *RUTTONJEE EDULJEE SHET v. COLLECTOR OF THANNA*

[10 W. R., P. C., 13: 11 Moore's I. A., 295

62. ————— *Breach of covenant not to injure trees—Construction of kabuliat.*—A kabuliat on which the tenant undertook to preserve certain trees in a jungle and not to injure them in any way, providing that, if he relinquished the talukh after destroying the jungle, he would pay Rs. 2,000 as the value of the trees, was construed to contain two distinct covenants, the second being a covenant not to injure the trees, on breach of which damages could be recovered. *WOOMA SOONDURE DOSSEE v. RAJKISTO ROY*

21 W. R., 366

63. ————— *Lease of jungle lands by Government—Right to cut timber.*—Where jungle land was let by Government to a tenant for the express purpose of being brought into cultivation, and the lease contained no reservation of the rights of the Government in respect of the cutting of timber trees, the Court held that the parties contemplated that the cutting of such trees by the tenant would be necessary for carrying out the purposes of the lease. *KOTUN RAM DOSS v. COLLECTOR OF SYLHET*

[22 W. R., 523

64. ————— *Agreement for certain dues in nature of rent—Subsequent Government notification as to tenure.*—By an agreement entered into between the predecessors of the plaintiff, durmakurtahs of a temple, and the defendants, it was provided that the defendants should have a permanent right of cultivating certain lands belonging to the

LEASE—continued

1 CONSTRUCTION—continued.

remedy being in damages for breach of the covenant against alienation. *Held* further that defendants 1, 2, and 3 were severally liable for the whole amount

his tenants TAMAYA & TIMAPA
[I L R., 7 Bom, 262]

82. ————— Oathorria—Re.

executor, and was sold in execution of a decree against B. *Held* that the sale passed a good title. It is

I L R., 10 Bom 342 and *Tamaya v. Timapa Ganpaya*, I L R 7 Bom, 262, referred to. *Held* also that, even if there had been a provision in the lease for forfeiture or for re entry by reason of an assignment in violation of its provisions it would not have the effect of invalidating the sale in execution which has always been held not to be of itself a breach of a covenant not to assign. GOLAK NATH ROY CHOWDHURY & MATHURA NATH ROY CHOWDHURY
[I L R., 20 Calc, 273]

83. ————— Condition restraining alienation—Alienation voluntary or by act of law—Condition for benefit of lessor—Re entry—Forfeiture—Transfer of Property Act (IV of

to the defendants in execution of a decree obtained against the lessee. In a suit in ejectment by the assigns of the lessors—*Held* that the condition was void under s 10 of the Transfer of Property Act, no right of re entry being reserved to the lessors by the lease. NIL MADHAB SIKDAR & NARATTAN SIKDAR
[I L R., 17 Calc, 826]

LEASE—continued

1 CONSTRUCTION—concluded.

84. ————— Covenant by lessee not to purchase under-tenant's holding—Validity thereof—Covenant running with land—The defendants, who were patnars of 10 annas of a certain pergunnah gave a temporary lease of their share to the plaintiffs, the lease containing the following stipulation: 'You shall not purchase the jote right of any of the tenants either in your own names or through, if you do so, the purchase shall be null

the benefit of the stipulation not only in respect of the 10 annas which they originally held as patnars, but also in respect of the 4 annas which they subsequently acquired, because a covenant such as that contained in the lease of the zamindar is one the benefit of which ought to run with land and that the defendants were rightly in possession. WATSON & CO & RAM CHAND DUTT. I C W N, 174

2 ZUR I PESHGI LEASE

expiry of the term mentioned in the deed. NUND LALL & BALUK 2 Agra, 132

PULTUN SINGH & RESHAL SINGH I W. R., 7

88. ————— Suit to set aside zur- peshgi lease—Act X of 1859, s 20—Ejectment—A zur- peshgi lease (which does not provide for its cancellation in the event of a breach of any of its conditions but provides for the cancellation of all sub-

when the period of the lease had expired. But as a zur i peshgi lease has always been treated as a mortgage, a suit to set it aside cannot be brought in

LEAVE TO DEFEND SUIT—concluded**Application for—**

See LIMITATION ACT ART 159
[I. L. R., 23 Calc, 573]

LEAVE TO SUE.

See COMPANY—WINDING UP—GENERAL
CASES I. L. R., 16 Bom., 644

See EXECUTION OF DECREE—MODE OF
EXECUTION—MORTGAGE,
[I. L. R., 24 Calc, 180]

See JURISDICTION—CAUSES OF JURISDIC
TION—CAUSE OF ACTION
[1 Ind. Jur., N S, 218
I. L. R., 11 Bom., 649
I. L. R., 13 Bom., 404
I. L. R., 15 Bom., 83
I. L. R., 17 Bom., 466]

See JURISDICTION—CAUSES OF JURIS
DICTION—DWELLING CARRYING ON
BUSINESS, OR WORKING FOR GAIN
[9 Bom., 429
I. L. R., 20 Bom., 787]

See JURISDICTION—SUITS FOR LAND—
GENERAL CASES 6 B L R., 686
[21 W R., 204
I. L. R., 4 Bom., 482
I. L. R., 19 Mad., 448
I. L. R., 26 Calc., 891
3 C W N., 670]

See LETTERS PATENT HIGH COURT
CL. 12 I. L. R., 18 Mad., 142
[I. L. R., 20 Bom., 787
I. L. R., 24 Calc., 180
1 C W N., 156]

See PRACTICE—CIVIL CASES—LEAVE TO
SUE OR DEFEND

See RIGHT OF APPEAL
[I. L. R., 17 Bom., 466]

See RIGHT OF SUIT—CHARITIES AND
TRUSTS I. L. R., 10 Mad., 185
[I. L. R., 21 Bom., 257]

See SMALL CAUSE COURT PRESIDENCY
TOWNS—JURISDICTION—ARMY ACT
[I. L. R., 18 Calc., 144]

See SMALL CAUSE COURT PRESIDENCY
TOWNS—PRACTICE AND PROCEDURE
—LEAVE TO SUE
[I. L. R., 18 Mad., 236]

LEGACY

See HUSBAND AND WIFE
[I. L. R., 1 All., 762, 773]

See CASES UNDER WILL—CONSTRUCTION.

Lapse of—

See SUCCESSION ACT s 90
[I. L. R., 16 Calc., 549]

Suit for—

See JURISDICTION—CAUSES OF JURISDIC
TION—CAUSE OF ACTION—LEGACY
[16 W R., 305]

See LIMITATION ACT 1877 ART 123
[2 Agra, 171
13 W R., 354
I. L. R., 9 Calc., 79
I. L. R., 19 Mad., 425]

See PARTIES—PARTIES TO SUITS—LE
GACY SUIT FOR 13 B L R., 142

See PROBATE—EFFECT OF PROBATE
[I. L. R., 18 All., 280]

See SECURITY FOR COSTS—SUITS
[I. L. R., 21 Calc., 832]

See SMALL CAUSE COURT PRESIDENCY
TOWNS—JURISDICTION—LEGACY SUIT
FOR I. L. R., 17 Calc., 387

to person appointed Executor

See SUCCESSION ACT s 124
[I. L. R., 15 Calc., 83]

Assignment of to executors—

Void assignment—Sensible— That an assignment
by a legatee to an executor of a legacy is void
VAUGHAN v HESELTINE I. L. R., 1 All., 763

See HURST v MUSSOORIE BANK

[I. L. R., 1 All., 762]

and BERESFORD v HURST

[I. L. R., 1 All., 772]

LEGAL NECESSITY

See CASES UNDER HINDU LAW—ALIENA
TION—ALIENATION BY WIDOW

**LEGAL PRACTITIONERS' ACT (XVIII
OF 1879)**

See CRIMINAL PROCEEDINGS
[I. L. R., 6 Mad., 252]

See FALSE EVIDENCE—GENERAL CASES
[I. L. R., 6 Mad., 252]

See CASES UNDER PLEADER

See SUPERINTENDENCE OF HIGH COURT—
CIVIL PROCEDURE CODE 1882 s. 623
[I. L. R., 9 Mad., 375]

s 10

See MUKHTAR I. L. R., 4 All., 375

LEASE—continued.**2. ZUR-I-PESHGI LEASE—continued.**

the Collector's Court unless the terms of the lease distinctly provide for such a course of procedure in the event of a breach of any of its conditions. **MAHOMED ALI v. BATOOK DAO NARAIN SINGH**

[1 W. R., 52]

RUTUN SINGH v. GREEDHAREE LALL

[8 W. R., 310]

87. ——— Rent not paid when due—Right to set off against advances.—Where a plaintiff let out in zur-i-peshgi certain property for a fixed period at a certain rental, in consideration of a sum of money advanced, and the defendant withheld and did not tender the rent as it fell due,—*Held* that the plaintiff was entitled to set off the rent so withheld against the money advanced, and was entitled to claim an account as against the defendant, although the period for which the zur-i-peshgi lease had to run had not expired. **NURSHING NARAYAN SINGH v. LUKPUTY SINGH** . . . I. L. R., 5 Calc., 333

88. ——— Zur-i-peshgi pottah, Construction and effect of—Raiyati holding, Creation of.—The plaintiffs granted to the defendants a zur-i-peshgi pottah which provided for a lease for five years. It provided further that the whole of the rent for that period was to be taken by the zur-i-peshgidars on account of the profits of their zur-i-peshgi with the exception of one rupee which was to be paid yearly to the proprietors; and that, if the zur-i-peshgi money was not paid at the end of the five years, the zur-i-peshgidars would remain in possession until payment. *Held* that this deed did not create a raiyati tenure. **Bengal Indigo Co. v. Raghobur Das**, I. L. R., 24 Calc., 272, referred to. **RAM KHALAWAN ROY v. SAMBUDD ROY**

[2 C. W. N., 758]

89. ——— Collection of rents by zamindar—Right to recover rents so collected.—A zamindar, after he had granted a zur-i-peshgi lease, collected the rents from the raiyats. *Held*, first, that the lessee was entitled to treat the rents so received as a payment of rent under the lease, and, secondly, was entitled to recover from the zamindar the amounts of rents so received in excess of the rent due under the lease. **RAMPERSHAD VOGUT v. RAMTOLUL SINGH** . . . Marsh., 655

90. ——— Suit by mortgagee for balance uncollected.—A mortgagor granted a ticca lease of the mortgaged land for ten years to B R, and under an assignment executed by the mortgagor it was arranged between him and the mortgagee that the latter should pay himself off the ticca rents at a certain rate annually until the realization of the mortgage-debt with principal and interest. *Held* that, until the mortgagee could prove that something had happened to disturb the arrangement made between him and the mortgagor under the terms of the deed of assignment, he could not, either according to law or the terms of the contract, call upon the mortgagor or his representatives to pay the balance of the mortgage-debt or to have that balance realized

LEASE—concluded.**2. ZUR-I-PESHGI LEASE—concluded.**

from the sale of the mortgaged property. **JUNESSUR DASS v. LALLA RAMDHUNEE LALL**

[17 W. R., 263]

91. ——— Usufructuary lease—Right to have property sold.—Where a lease gives the lessee the right to continue in possession until money borrowed from him is liquidated, the lessor is put in the position of a mortgagor, and, to the extent of the security given, the lessee is in the position of a mortgagee, but the lessee is not entitled to have the property sold. **KIEWUL SAHOO v. RASH NARAYAN SINGH** . . . 13 W. R., 445

LEASEHOLD PROPERTY.*See* SECURITY FOR COSTS—SUITS.

[7 B. L. R., Ap., 60]

LEAVE TO APPEAL.

See CASES UNDER PRIVY COUNCIL, PRACTICE OF—SPECIAL LEAVE TO APPEAL.

LEAVE TO BID.

See MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS.

[I. L. R., 18 Mad., 153]

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES.

[I. L. R., 16 Calc., 132, 682]

I. L. R., 16 I. A., 107

I. L. R., 19 Calc., 4

4 C. W. N., 474

See SALE IN EXECUTION OF DECREE—MORTGAGED PROPERTY.

[I. L. R., 18 Mad., 153]

I. L. R., 18 All., 31

Application for—

See LIMITATION ACT, ART. 179—STEP IN AID OF EXECUTION.

[I. L. R., 13 All., 211]

I. L. R., 21 Bom., 331

I. L. R., 23 Calc., 680

LEAVE TO DEFEND SUIT.*See* COMPENSATION—CIVIL CASES.

[I. L. R., 18 Bom., 717]

See INSOLVENT ACT, s. 36.

[7 B. L. R., Ap., 61]

See NEGOTIABLE INSTRUMENTS, SUMMARY PROCEDURE ON.

[6 B. L. R., Ap., 64]

1 Ind. Jur., N. S., 395

9 B. L. R., 441

See PRACTICE—CIVIL CASES—LEAVE TO SUE OR DEFEND.

[I. L. R., 3 Calc., 370, 539]

LEGISLATURE, POWER OF—concluded*See* DIVORCE ACT s 2

[I L R, 10 Bom, 423]

See FOREIGNERS

[I L R, 18 Bom, 638]

See GOVERNOR OF BOMBAY IN COUNCIL

[8 Bom, A C, 105]

I L R, 8 Bom, 284

See GOVERNOR OF MADRAS IN COUNCIL

[2 Mad, 439]

See HIGH COURT JURISDICTION OF—
N W P—CIVIL

[I L R, 11 All, 490]

See JURISDICTION OF CRIMINAL COURT—
EUROPEAN BRITISH SUBJECTS

[7 Bom, Cr, 6]

14 B L R, 106

See JURISDICTION OF CRIMINAL COURT—
GENERAL JURISDICTION

[I L R, 3 Calc, 63]

I L R, 4 Calc, 173

L R, 5 L A, 178

See OFFENCE COMMITTED ON THE HIGH
SEAS

7 Bom, Cr, 89

[8 Bom, Cr, 63]

See SMALL CAUSE COURT MOFUSSIL—
PRACTICE AND PROCEDURE—MISCEL-
LANEOUS CASES

I L R, 1 All, 87

*Proceedings of—**See* STATUTES CONSTRUCTION OF

[I L R, 23 Calc, 1017]

I L R, 23 Bom, 112

See SUPERINTENDENCE OF HIGH COURT—
CHARTER ACT—CRIMINAL CASES

[I L R, 28 Calc, 188]

LEGITIMACY*See* CASES UNDER HINDU LAW—MAR-
RIAGE*See* CASES UNDER MAHOMEDAN LAW—
ACKNOWLEDGMENT**LEPROSY***See* CASES UNDER HINDU LAW—INHERIT-
ANCE—DIVESTING OF EXCLUSION FROM
AND FORFEITURE OF, INHERITANCE—
LEPROSY*See* MALABAR LAW—CUSTOM

[I L R, 13 Mad, 209]

LESSOR AND LESSEE.*See* CASES UNDER LANDLORD AND TENANT*See* CASES UNDER TRANSFER OF PROPERTY**LETTER.***from Judge**See* EVIDENCE—CIVIL CASES—MISCEL-
LANEOUS DOCUMENTS—LETTERS

[I C L R, 239]

*of Advice**See* EVIDENCE ACT s 32 OF 2

[9 B L R, Ap, 42]

*of License**See* CONSIDERATION

[2 Ind Jur, N S, 243]

LETTERS*See* EVIDENCE—CIVIL CASES—MISCEL-
LANEOUS DOCUMENTS—LETTERS

[12 B L R, 317]

19 W R, 356

See EVIDENCE CRIMINAL CASES—
LETTERS

[9 B L R, 36 17 W R, Cr, 15]

*in post office**See* ATTACHMENT—SUBJECTS OF ATTACH-
MENT LETTERS IN POST OFFICE

[I L R, 13 Mad, 242]

*of assignment.**See* STAMP ACT 1869 s 3 ART 18

[I L R, 2 Calc, 58]

LETTERS OF ADMINISTRATION*See* CASES UNDER CERTIFICATE OF AD-
MINISTRATION*See* COSTS—SPECIAL CASES—LETTERS OF
ADMINISTRATION

[I L R, 2 Bom, 9]

See ILLEGITIMACY. 11 B L R, Ap, 6*See* CASES UNDER PRACTICE—CIVIL CASES
—PROBATE AND LETTERS OF ADMINIS-
TRATION*Duty payable on—**See* CASES UNDER COURT FEES ACT, SCH I,
ART 11*with will annexed, Grant of—**See* PROBATE—TO WHOM GRANTED

[I L R, 19 Calc, 582]

I L R, 15 Mad, 380

I L R, 22 Mad, 345

See SUCCESSION ACT s 208

[I L R, 1 Calc, 149]

1 ——— Jurisdiction of High Court—
British born subject dying at Moulsmein—In the
case of a British born subject dying and leaving
assets in Moulsmein but none in Calcutta and a will
dated 5th August 1865 before Act X of 1865 came
into operation—Held that the executrix could not
obtain probate or letters of administration on with the
will annexed from the High Court in Bengal SAUN-
DERS v NGA SHOAY GEEN . . . 8 W R, 3

LEGAL PRACTITIONERS' ACT (XVIII OF 1879)—continued.

s. 13, cl. (f), and s. 14.

See MUKHTAR I. L. R., 27 Calc., 1023

ss. 14 and 40—*Irregularity in procedure in dismissing a mukhtear*.—A charge of unprofessional conduct brought against a practitioner holding a certificate under Act XVIII of 1879 having been found to be established by a subordinate Court, which also considered that he in consequence should be dismissed, and the same having been reported, in conformity with s. 14 of that Act, to the principal Court in the province, such dismissal was ordered. *Held* that the practitioner could not be dismissed or suspended under that section without his having been allowed, under s. 40, an opportunity of defending himself before that Court. It is within the duties of a Court, informed of the misconduct of one of the practitioners before it, to take steps to have the matter adjudicated upon. *IN THE MATTER OF SOUTHERAL KRISHNA RAO* I. L. R., 15 Calc., 152 [I. L. R., 14 I. A., 154]

s. 32.

See MUKHTAR . I. L. R., 4 All., 375

Outsider practising as mukhtear, his liability to punishment.—*Mukhtears, their functions*.—Civil Procedure Code, s. 37.—Act XVIII of 1875 is an amending as well as a consolidating Act, and one of the respects in which it amended the old law was the conferring upon the High Court power "to make rules declaring what shall be deemed to be the functions, powers, and duties of the mukhtears practising in the subordinate Courts. When a person other than a duly certificated and enrolled mukhtear constantly, and as a means of livelihood, performs any of the functions or powers which the rule framed by the High Court in accordance with the provisions of the Legal Practitioners Act says are the functions and powers of a mukhtear, he practises as a mukhtear and is liable to a penalty under s. 32 of the Act. The words "any person" in s. 32 embrace pure outsiders as well as duly qualified and enrolled mukhtears who have failed to take out their certificates. *G N*, though not a certificated mukhtear, was in the habit of appointing and instructing pleaders in the Civil Courts on account of certain persons who paid him a regular monthly salary for so doing. In a proceeding against him under the Legal Practitioners Act *G N* made this statement: "I receive a letter from the mofussil from a person and act for him, he sending the vakalatnama with his letter. I receive monthly wages from each of the persons who employ me. Each of the employers I have mentioned belongs to a distinct family and lives in a separate village." *Held* that *G N* was neither a private servant nor a recognized agent of any of his employers within the meaning of s. 37 of the Civil Procedure Code, and was liable to a penalty under s. 32 of the Legal Practitioners Act for having practised as a mukhtear. *Held* also that, having regard to the Court in which *G N* practised, the words in s. 32 "to a fine not exceeding ten times the amount of the stamp required by this Act for a certificate

LEGAL PRACTITIONERS' ACT (XVIII OF 1879)—concluded.

authorizing him so to practise in such Court" were equivalent to the words "to a fine not exceeding Rs250." *IN THE MATTER OF THE PETITION OF GIRIHAR NARAIN. TUSSEDUQ HUSAIN v. GIRIHAR NARAIN* . . . I. L. R., 14 Calc., 558.

— s. 36.

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT—CIVIL CASES.

[I. L. R., 21 All., 181

4 C. W. N., 36

Legal Practitioners' Act Amendment Act (XI of 1896), s. 4—Legal proof—Nature of evidence required—Power of superintendence of High Court—Charter Act (21 & 25 Vict., c. 104), s. 15.—Where a District Judge relying upon an unverified report purporting to come from the Secretary of a Bar Association framed and published the name of the petitioners in the list of touts,—*Held* that the words "proved to their or his satisfaction" in s. 36, Act XI of 1896, refer to proof by any of the means known to the law of the fact upon which the Court is to exercise its judicial determination, and the Judge had acted without having before him any legal evidence as required by s. 36, Legal Practitioners Act. The High Court may interfere in such a case under the wide powers of superintendence given to it by the Charter Act. *IN RE SIDDHESHWAR BOBAL* . . . 4 C. W. N., 36.

See IN THE PETITION OF MADHO RAM

[I. L. R., 21 All., 181

LEGAL PRACTITIONERS' AMENDMENT ACT (XI OF 1896).

See LEGAL PRACTITIONERS ACT, s. 36.

[4 C. W. N., 36

See MUKHTAR I. L. R., 27 Calc., 1023

LEGAL REMEMBRANCER.

Appearance by—

See PRACTICE—CRIMINAL CASES—RULE TO SHOW CAUSE I. L. R., 4 Calc., 20

LEGATEE.

See PROBATE—OPPOSITION TO, AND REVOCATION OF, GRANT.

[I. L. R., 17 Mad., 373

LEGISLATURE, POWER OF—

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—SUBSTANTIAL QUESTION OF LAW.

[I. L. R., 1 Calc., 431

See BENGAL REGULATION III OF 1818.

[6 B. L. R., 392, 459

See BOMBAY SURVEY AND SETTLEMENT ACT, 1865, ss. 35, 48 I. L. R., 1 Bom., 352

LETTERS OF ADMINISTRATION

—continued

applied for letters of administration, and issued a citation to the appellant H N. H entered a caveat. No further proceedings were taken, and the matter remained pending. On H's death, D applied for a fresh citation to the appellant H N, but the District Judge refused to issue a citation, and declined to issue

when application was made by D. In default of such a citation, the proceedings were defective in substance—a circumstance which constituted good cause for the revocation of the letters of administration, under s 50 of Act V of 1881. *HORMUJI BAYROT v. BAI DHANRAJ* (I L R, 12 Bom., 164)

Administration

who
probate
admi

suit NARABHIMANUJI v. ...

(I L R, 18 Mad., 71)

Deceased

place of abode or any property within his control. See s 240 of the Indian Succession Act (X of 1869). *PARDUNJI ASPANDJAN v. DASTURJI* (I L R, 17 Bom., 223)

(I L R, 17 Bom., 223)

14 Administration Act (V of 1881), s. 42—Power

LETTERS OF ADMINISTRATION

—continued

of Court to associate another person with applicant in grant of letters of administration—On an application for letters of administration to which the applicant is legally entitled under s 23 of the Probate and Administration Act the Court has no

DASTI

I L R, 21 Cal., 344

15 Grant of administration without determining title to property—In an application for letters of administration *held* on the evidence that the deceased left property to which administration could be granted without finally determining the title to such property. *MURTY PERSHAD NARAIN SINGH v. KISHOR KISHORE NARAIN SINGH* (I L R, 21 Cal., 344)

16 Probate and

who has not completed his age at the date of the Probate and Administration Act (V of 1881), read with the preamble and s 3 of the Indian Majority Act, mean any other person not domiciled in British India. s 3 of the Probate and Administration Act therefore fixes the limit of the period of disability for the purpose of the Act not only for persons domiciled in British India, but for any other persons whether they be aliens or not. *White applicant*

Native
years of
majority
for his
of his father who had carried on business and left all his estate and effects in Calcutta.—*Held* that, the applicant not having attained the age of 18 years the application must be refused. *IN THE GOONS OF SEWABAIN MOHATA* (I L R, 21 Cal., 311)

17. Promise by a testator to a firm consisting of two undivided Hindu brothers—*Deed on sale on decease of the brothers—Partner, died by surviving*—Two brothers, members of an undivided Hindu family, who traded as "T. Iyengar and Brother," became the holders of a promissory note given to the firm. The elder brother died, and his son joined the firm in his place and he and his wife filed a suit against the makers of the note, but before the action was begun the elder brother and his son (a minor) was succeeded by another firm, consisting of the other partner and the son of the deceased brother. The plaintiffs had not taken any steps to transfer the note to their respective shares, and the court *held* that the suit must be dismissed as being barred by the Limitation Act. *IN THE GOONS OF SEWABAIN MOHATA* (I L R, 21 Cal., 311)

LETTERS OF ADMINISTRATION

—continued.

2

High Court, N.-W. P.—*Administrative operation in Bengal.*—A British subject died intestate, leaving property within the jurisdiction of the High Court of the N.-W. P. and of the High Court at Fort William. General letters of administration were granted by the High Court of the N.-W. P. to the Administrator General of Bengal, who was not then aware that the deceased had left property within the jurisdiction of the High Court at Fort William. On discovering that the deceased had left property within the jurisdiction of the latter Court, the Administrator General applied to that Court for general letters of administration, which were granted by the Court on condition that he would apply to have the letters of administration granted by the High Court of the N.-W. P. recalled. The High Court at Fort William has power to grant to the Administrator General letters of administration which shall operate throughout the whole of the Presidency of Bengal. *IN THE GOODS OF NECHTERLEIN* [1 B. L. R., O. C., 19

3.

Attorney of executor—Administrator General.—The High Court had no power to grant letters of administration to the attorney of the executor of a deceased in respect of assets situate in the Punjab. The High Court has power to grant letters of administration in respect of such assets to the Administrator General. *IN THE GOODS OF DUNCAN* . . . 1 B. L. R., O. C., 3

4.

Succession Act (X of 1865), ss. 212, 213—Attorney within jurisdiction of Court.—Under ss. 212 and 213, Act X of 1865, it is necessary that the attorney applying for letters of administration should be within the jurisdiction of the Court. *IN THE GOODS OF NESBITT*. *IN THE GOODS OF BRIANT* . . . 4 B. L. R., App., 49

5.

Letters of administration or probate from Supreme Court.—The obtaining of probate or letters of administration from the late Supreme Court is no ground for subjecting the party obtaining them to the jurisdiction of the High Court in matters connected with the estate in respect to which probate or letters of administration were so obtained. *LESLIE v. INGLIS* . 1 Hyde, 67

6.

Widow not resident in any zillah—Act XXVII of 1860—Act VIII of 1865.—Where a widow, not being resident in any zillah, has not been able to get a certificate under Act XXVII of 1860, letters of administration were, on the consent of the widow, directed to issue to the Administrator General. *IN THE MATTER OF DAMOODAR DOSS* . . . Bourke, Test., 6

7.

Jurisdiction of Recorder's Court.—The Recorder's Court had the same powers in respect to the grant of probates to the estates of natives as the High Court before and after the passing of the Indian Succession Act, *i.e.*, it could not grant probates of the will of a Hindu in any case in which, according to the Hindu law of inheritance and succession, the testator had no power to make a will; and, in dealing with the will after probate has been granted, the Court could not give effect

LETTERS OF ADMINISTRATION

—continued.

to it, so far as it is contrary to the Hindu law of inheritance. *Quare*—Whether the Recorder's Court has power to grant letters of administration, or such letters with a will annexed, to the estates and effects of a native of British India; but in all cases it must be guided in granting them by the law of inheritance or succession of such native, and it cannot grant administration to the estate of a Hindu, Mahomedan, or Bhuddist which would interfere with such law. *IN THE MATTER OF THE PETITION OF FUKEROODEEN ADAM SHAH* . . . 11 W. R., 413

8.

Administration with will annexed—Act VIII of 1855, s. 17—Pecuniary legatee—Administrator General.—A pecuniary legatee is not entitled to letters of administration with will annexed in preference to a creditor, and therefore is not entitled, under ss. 10 and 17 of Act VIII of 1855, to a grant of administration in preference to the Administrator General. *IN THE GOODS OF VIRGAL* . . . 1 Bom., 103

9.

Ground for refusing letters of administration—Act VIII of 1855, s. 30.—The statement of a belief by the Administrator General that applicants for probate are about to make charges with s. 30, Act VIII of 1855, prohibits, and thereby renders it illegal for them to "receive or retain," is not a sufficient ground for inducing the Court to refuse letters of administration to applicants otherwise well entitled, and whose application is altogether *dehors* the Administrator General's Act. *IN THE GOODS OF BELLASIS*. *FOGGO v. LOUDON* [1 Ind. Jur., O. S., 139

10.

Minor Hindu widow—Guardian—Special citation—Caveat.—Upon an application by the father of an infant Hindu widow for the grant of letters of administration to him as her guardian and as guardian of the estate of her deceased husband, and of the estate of the husband's mother, it appeared that the only property of the husband consisted of a sum of money ordered to be paid to him under a certain decree, upon his constituting himself the representative of the mother. This he had not done. It also appeared that there were no unliquidated debts due by the husband. The sum of money in question was in the hands of the Official Trustee. *Held* that letters of administration could not be granted to the father, but that the widow could apply when she came of age, and that until that time the Official Trustee could pay the income to her next friend for her maintenance. A special citation had been served on the step-mother of the husband, and she had entered a caveat. *Held* that she had no right to enter a caveat simply because she had received a special citation. *IN THE GOODS OF HURRY DOSS BONERJEE* . I. L. R., 4 Calc., 87

11.

Citation—Defective citation—Revocation of letters of administration—Act V of 1881, ss. 16 and 50.—S, a Parsi, died, leaving a will, whereby he directed that after his death his estate should be managed by his widow J, and after her death by his sister-in-law H, and after H's death by the appellant, his adopted son H N. On J's death, the testator's brother D

LETTERS OF ADMINISTRATION
—continued.

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27. — Grant in respect of immove

such estate IN THE GOODS OF GRISH CHUNDER MITTER

[I. L. R., 6 Calc, 483; 7 C. L. R., 593

28. — Lost will—Administration with will annexed—Succession Act (X of 1865), ss 208 209—Hindu Wills Act (X XI of 1870), s 2—

ISHUR CHUNDER SURMAH & DOKAMOTU DEBEA

[I. L. R., 8 Calc., 864; 11 C. L. R., 135

LETTERS OF ADMINISTRATION
—continued.

moved, was refused, though the Judge's order, directing that the letters should be issued to the Adminis-

CHAUND RAMDAIAL & GUMTIRAI GHEILA PEMIA & GUMTIRAI 8 Bom, O. C., 140

30. — Khoja Mahomedan estate —Succession in cases of intestacy of Khoja Mahomedans—Custom, — A Khoja, having died intestate

tor, seem to be generally limited to recovering debts and securing debtors paying such debts. Where a will gave the executor full powers with regard to the payment of the testator's debts,—Held that an administrator with the will annexed who was a Khoja Mahomedan succeeded to those powers and in a suit brought against him as such administrator by an alleged creditor of the testator's estate represented all the persons interested in the estate AHMEDBHAY HURTIKOT & VILLEBHAY CASSUMBHAY

[I. L. R., 6 Bom., 703

See IN THE MATTER OF ISMAIL HAJI ABDULLA

[I. L. R., 6 Bom., 452

32. — Joint letters of administration—Applicant indebted to estate—Where there were grounds for believing that one brother was indebted to the estate of a deceased brother, the lower Court, it was held, exercised a wise discretion in refusing to grant letters of administration to such brother jointly with the other brothers of the deceased IN THE GOODS OF STEPHEN

[13 B. L. R., S. N., 3, 10 W. R., 90

to the Administrator General are made to him by

34. — Suit by Hindu widow as

tate of the deceased, to have such attachments re-

LETTERS OF ADMINISTRATION

—continued—

administration was affected by the fact that, if the defendant was really due to the plaintiff's family and not to the children of the defendant, they could not be opened in the exercise of the right of ownership and it took a grant of letters of administration, thus the probate court did not discuss the nature of the claim, and, consequently, the other members of the family should have been joined as plaintiffs. *Thakur v. Thakur*, 11 C. W. N. 147, 17 M. L. J. 272, 10 Ind. L. R. 173, 17 M. L. J. 147.

18. *Appellate after letters of administration granted.*—*Principle of law.*—*Probate and Administration Act (V of 1881), s. 50.*—*Letters of administration granted.*—*Held*, that the grant of letters of administration is not a bar to the grant of letters of administration in the same case. *Held*, that the grant of letters of administration is not a bar to the grant of letters of administration in the same case. *Held*, that the grant of letters of administration is not a bar to the grant of letters of administration in the same case. *Held*, that the grant of letters of administration is not a bar to the grant of letters of administration in the same case.

(I. L. R., 23 Cal., 570)

19. *Succession Act (X of 1865), s. 10.*—*Intestate estate.*—*Probate and Administration Act (V of 1881), s. 50.*—*Effect of grant of letters of administration on jurisdiction of District Judge to grant fresh applications.*—*Where a grant of letters of administration made by a District Judge had been revoked under the provisions of s. 50 of Act V of 1881, it was held that the cause of revocation being removed, the Judge had jurisdiction to entertain a fresh application for the same object.* *BRIT LAL v. SECRETARY OF STATE FOR INDIA*, I. L. R., 30 All., 109.

20. *Letters of administration with will annexed.*—*Non-acceptance of duties of executor.*—*Refusal to take out probate.*—*Probate and Administration Act (V of 1881), s. 18.*—*Succession Act (X of 1865), s. 195.*—*Acceptance or renunciation of executorship.*—*An executrix, after being cited as provided by s. 16 of Act V of 1881 to accept or renounce her executorship, stated that she was administering the estate; but, having applied for a certificate under Act VII of 1889, did not consider it necessary to take out probate. Held* that this was not such an acceptance as is contemplated by s. 18 of Act V of 1881, the language of which is the same as that of s. 195 of the Indian Succession Act (X of 1865), and that, on the executrix declining to prove the will, the District Judge was right in granting letters of administration with the will

LETTERS OF ADMINISTRATION

—continued—

annexed to the sole residuary legatee. *MOTIBAI v. KARSADRAY NARAYANDAS*.

(I. L. R., 10 Bom., 123)

21. *Court of Wards.*—*The Court of Wards is not a "person," and letters of administration cannot under the law be granted to it.* *GANDHARU KORA v. COMMISSIONER OF PANDA*, I. L. R., 25 Cal., 795, 12 C. W. N., 349.

22. *Revocation of letters of administration.*—*Application to cite necessary parties.*—*Joint cause.*—*Probate and Administration Act (V of 1881), s. 50.*—*Letters of administration may be revoked on the ground that proper citation was not served, whereby a necessary party was not served with a citation, that being a "just cause" within s. 50 of the Probate and Administration Act.* *IN THE GOODS OF GURJIA BHUJIA MUNDRA*.

(2 C. W. N., 607)

See REBELLE v. REBELLE, 2 C. W. N., 100.

23. *Probate and Administration Act (V of 1881), s. 50.*—*Effect of revocation of grant of letters of administration on jurisdiction of District Judge to grant fresh applications.*—*Where a grant of letters of administration made by a District Judge had been revoked under the provisions of s. 50 of Act V of 1881, it was held that the cause of revocation being removed, the Judge had jurisdiction to entertain a fresh application for the same object.* *BRIT LAL v. SECRETARY OF STATE FOR INDIA*, I. L. R., 30 All., 109.

24. *Suit by unsuccessful claimant to letters of administration.*—*Right of suit.*—*Suit to determine right of inheritance or to be appointed shikait of temple.*—*Where letters of administration were granted to the defendant, in preference to the plaintiff, the order granting the letters of administration is not a bar to the plaintiff bringing a suit for the purpose of determining any question of inheritance or of the right to be appointed as shikait of the temple in which will supersede the grant.* *Arumugai Dasi v. Mohendra Nath Wadadar*, I. L. R., 20 Cal., 888, referred to. *JAGANNATH PRASAD GUPTA v. RUSHIR SINGH*, I. L. R., 25 Cal., 354.

25. *Limited grant.*—*Succession Act (X of 1865), s. 190.*—*Hindu Wills Act (XXI of 1870).*—*If Hindus take out letters of administration at all, they must take out general letters. Letters of administration limited to certain property cannot be granted.* *IN THE GOODS OF RAM CHAND SEAL*, I. L. R., 5 Cal., 2; 4 C. L. R., 280.

26. *Grant to Hindu.*—*Probate Act, V of 1881, s. 4.*—*Certain joint property in which five brothers were interested being the subject of a suit in which the rights of all parties were fully ascertained and decreed, one of such parties (who died after the decree) was declared entitled to a 5-30th share in the joint estate. Subsequently to this decree, several orders were made in the*

LETTERS PATENT, HIGH COURT, 1885

—continued.

8. ————— Evidence as to jurisdiction

Mandaly since January 1894 till the 11th July

alone represented the defendants as carrying on business in Calcutta, and that portion of the plaint was not verified, nor could the plaintiff give evidence to prove that the cause of action arose in Calcutta,

does not cause a variance in the original cause of action. It is sufficient to show that the cause of action or part of it arises in Calcutta when the suit comes on for hearing. **FINE & BULDEO DASS**

(I L R, 28 Calc, 715

cl 13

See CASES UNDER TRANSFER OF CIVIL
CASH—LETTERS PATENT, HIGH COURT,
CL 13

cl 15

See APPEAL TO PRIVY COUNCIL—CASES
IN WHICH APPEAL LIES OR NOT—AP-
PEALABLE ORDERS **7 B L R, 730**

1. ————— Right of appeal—Appeal
after new Letters Patent—Where two Judges de-
cided a case of original civil jurisdiction under the
original Letters Patent, but the decree was sealed,
and appeal preferred after the amended Letters Patent
had come into operation,—Held that the right of

tion therein that parties should retain any right
of appeal which existed before its publication in
respect of suits then pending, or judgments given, or
of decrees made but not executed. **FRANK BOWMAN**
v **HORMASJI BARJORJI** **3 Bom. O. C. 48**

2 ————— "Judgment"—

LETTERS PATENT, HIGH COURT, 1885

—continued

3. ————— "Appeal"—"Judgment"—

PART

8 B L R, 433, 17 W. R., 384

See HOWARD v WILSON

(I L R, 4 Calc, 231 2 C. L. R., 488

4. ————— Appeal from decision of

Procedure Code, and not by rule 35, of the Vice-
Admiralty Regulations published under the authority
of 2 Will IV, c 51. Rule 35 applies to appeals
from the High Court to the Privy Council. **The**
Brenhilda, I L R, 7 Calc 547; L. R., 81 L., 153,
relied on. The mere fact of the salvors having appeared
and mentioned in Court the matter of the attachment
of an award for salvage services rendered by the
decree making the award, did not prevent it as a appeal
from that decree. **IN THE MATTER OF THE SHIP**
"CHAMPION" **I L R, 17 Calc, 68**

5. ————— Whether an ~~interlocutory~~ order be such as
subject of an appeal. **CHANDER** **Cor., 5**

6. ————— ~~Interlocutory order~~—
order—Under the rules of the High Court, as appeal
to the High Court from an order made by one of its Judges in the course of a trial, an appeal is allowed from the order of a Judge in
order of a Judge in the course of a trial. **HINDIA** **3 Calc, 283**

LETTERS OF ADMINISTRATION

—concluded.

to proceed adding the son as a party, or to treat the plaintiff as manager of the infant, but dismissed the suit with costs. *KADUMBINEE DOSSEE v. KOYLASH KAMINEE DOSSEE* . I. L. R., 2 Calc., 431

35. ——— Attorney of executor in England—*Costs of entering caveat*.—*L*, a British subject possessed of property both in India and England, died in England, leaving a will, by which he appointed four persons to be his executors in England, and *W D* his executor in India, "the latter accounting to the former for his intromission, upon which he will charge a commission of three per cent." Probate was granted to the four English executors, but *W D* renounced probate. On an application for letters of administration with the will annexed, to be granted to *D G L*, the attorney in India of the English executors, the Court, after directing a special citation to issue to the Administrator General, held that the English executors were intended by the testator to have power of administering his assets in India as well as in England, and therefore *D G L* as their attorney was entitled to letters of administration. *IN THE GOODS OF LEONIE*

[15 B. L. R., Ap., 8

36. ——— Security from administrator of Hindu estate—*Personally*.—The security required from the administrator of the effects of a deceased Hindu extends, as in the case of an English administrator, only so far as to cover the personality of the deceased. *IN THE GOODS OF GOUB CHUNDER THAKOOR* . 1 Ind. Jur., N. S., 229

LETTERS PATENT, HIGH COURT, 1865.

Creation and continuation of High Court.—The High Court as now existing was continued, not created, by the Letters Patent of 1865. *BARDOT v. "AUGUSTA"* . 10 Bom., 110

It was created by the Letters Patent of 1862.

1. ——— cl. 10—*Giving instructions to counsel—Reference from Small Cause Court—Attorney*.—Giving instructions to counsel in a reference from the Small Cause Court is acting for the suitor within cl. 10 of the Letters Patent of the High Court and can only be done by an attorney of the Court. *MORAN v. DEWAN ALI SIRANG*

[8 B. L. R., 418

2. ——— *Civil Procedure Code, 1859*, s. 17—*Recognized agent*.—Under this clause, a "recognized agent" described in s. 17, Act VIII of 1859, has not the option of addressing the Court, as the suitor himself may do. *PRANATH CHOWDREY v. GANENDRO MOHUN TAGORE* . 3 W. R., 108

cl. 12.

See APPEAL—LETTERS PATENT, CL. 12.

[13 B. L. R., 91
21 W. R., 204

See HIGH COURT, JURISDICTION OF—
BOMBAY—CIVIL.

[I. L. R., 13 Bom., 302

LETTERS PATENT, HIGH COURT, 1865.

—continued.

See CASES UNDER JURISDICTION—CAUSES OF JURISDICTION.

See CASES UNDER JURISDICTION—SUITS FOR LAND.

See PARSIS . I. L. R., 13 Bom., 302

See PRACTICE—CIVIL CASES—LEAVE TO SUE OR DEFEND . I. L. R., 3 Calc., 370
[I. L. R., 13 Bom., 404

See RIGHT OF APPEAL.

[I. L. R., 17 Bom., 466

See STATUTES, CONSTRUCTION OF.

[I. L. R., 12 Bom., 507

1. ——— *Jurisdiction of High Court—Cases under s. 100*.—The High Court, under Letters Patent, 1862, cl. 12, had jurisdiction in all cases where the amount claimed is over Rs 100, whatever may be the amount received. *SIKUR CHUND v. SOORINGMULL* . 1 Hyde, 272.

2. ——— *Jurisdiction of High Court—Stat. 15 & 10 Vict., c. 76, ss. 18 and 19; and 9 & 10 Vict., c. 95, s. 128—Decisions of English Courts*.—The decisions of the English Courts on ss. 18 and 19 of the Common Law Procedure Act (15 & 16 Vict., c. 76), relating rather to matter of procedure than of jurisdiction, are not so much in point with regard to the interpretation of cl. 12 of the Letters Patent, 1865, as the decisions on s. 128 of the English County Courts Act (9 & 10 Vict., c. 95), which are directed to the marking out and limiting of the jurisdiction of the Court. *SUGANCHAND SHIVDAS v. MULCHAND JOHARIMAL* . 12 Bom., 113.

3. ——— *Whether an order granting leave to sue under this clause may form the subject of an issue for trial in the suit*.—The legality of an order granting permission to institute a suit under cl. 12 of the Letters Patent may form the subject of an issue for trial in the suit so instituted. *NAGAMONEY MUDALIAR v. JANAKIRAM MUDALIAR*
[I. L. R., 18 Mad., 142.

4. ——— *Addition of a defendant residing out of jurisdiction in a suit in which leave to sue has been already obtained—Fresh leave to sue such new defendant*.—Where a defendant is added who does not reside within the jurisdiction of the High Court, and against whom the cause of action has not arisen wholly within that jurisdiction, leave must be obtained under cl. 12 of the Letters Patent, 1865, even if leave was obtained when the suit was originally filed. *RAMPARTAB SAMRATHAI v. FOOLIBAI* . I. L. R., 20 Bom., 767

5. ——— *Application of restrictive words of cl. 12—Defendant*.—The restrictive words of cl. 12 of the Letters Patent, 1865, apply to the case of a plaintiff; but there is no similar restraining provision applicable to a case where the person seeking the exercise of the Court's jurisdiction is the defendant. *KISSORY MOHUN ROY v. KALI CHURN GHOSH*
[I. L. R., 24 Calc., 190
1 C. W. N., 156

LETTERS PATENT, HIGH COURT, 1865

—continued

the judgment on which such final decree is based, is no ground for an appeal under cl 15 of the Letters Patent. **IN THE MATTER OF THE PETITION OF HURBUX SAMAY HURBUX SAMAY & THAKOOR PERSAD**

[I. L. R., 10 Cal., 103; 13 C. L. R., 285]

21. ———— *Appealable order—Judgment—Decree—Order passed in suit referred to Commissioner to take accounts—The question whether*

ices of the Peace of Calcutta \ Oriental Gas Company 8 B L R., 433, distinguished HIRJI JIVA & NARRAN MULJI 13 Bom., 129

[2 C L R., 583]

23. ———— *Order allowing commission to Administrator General—An order passed by a single Judge of the High Court under Act II of 1874, s. 27, allowing to the Administrator General commission*

[I L R., 1 Mad., 148]

24. ———— *Order refusing to set aside award Letters Patent, High Court 1865, cl 15—Code of Civil Procedure (Act XIV of 1892) s. 259—An order made by a Judge of the High Court, and an appeal therefore lies from such an order to the High Court in its appellate jurisdiction. Such an appeal is not restricted by s. 588 of the Code of Civil Procedure. **HURRISH CHANDER CHOUDHRY & KALI SUNDARI DEBI I L R., 3 Cal., 482 I. R., 10 I. A., 4 referred to. TOOTSEE MOSKY DASSEE & SUDRY DASSEE***

[I L R., 26 Cal., 361
3 C. W. N., 347]

25. ———— *Appeal from decision of Judge in original jurisdiction refusing leave to*

LETTERS PATENT, HIGH COURT, 1865

—continued

matter **DESOUZA & COLES** 3 Mad., 384

26. ———— *Order refusing to stay proceedings—Fresh suit after withdrawal without*

fresh suit is an order of an interlocutory character, and is not appealable. **CHITTO & MUZZER HOSSEY** [2 Hyde, 212]

27. ———— *Payment—Order refusing to confirm a award—In a suit referred to arbitrator under Act VIII of 1859, the arbitrator informed the parties that he had determined to award the plaintiff Rs. 1,500 with costs, but a few days after*

WILSON

[I L R., 4 Cal., 231; 2 C L R., 488]

28. ———— *Order of committal for contempt of Court—Procedure—Contempts are in the nature of offences and therefore under cl 15 of the Letters Patent, 1865 an appeal lies from an order of committal for contempt. In dealing with an appeal from such an order the Appellate Court will not go behind the order the disobedience to which constitutes the contempt. **NAVITAHOO & NAROTAM DAS CANDAS*** I L R., 7 Bom., 6

29. ———— *Order on hearing under s. 622, Civil Procedure Code—Judgment—Suit for rent—In a suit in a Small Cause Court for rent due in respect of two pieces of land the Court passed a decree in favour of the plaintiff. The defendant preferred a petition to the High Court under Civil Procedure Code, s. 622, which came on for hearing before one Judge. He held that the Small Cause Court had failed to give effect to a form r decree between the parties in respect of one piece of land,*

LETTERS PATENT, HIGH COURT, 1865

—continued.

8. ———— *Order fixing date of hearing—Civil Procedure Code, s. 156.*—An order made by a Judge of the High Court at settlement of issues fixing a distant date for the hearing of a suit is not an order under s. 156 of the Civil Procedure Code and is appealable under Letters Patent, s. 15. *R. v. R.* [I. L. R., 14 Mad., 88]

9. ———— *Appeal—Remand order.*—At the hearing of an appeal before a single Judge of the High Court, the case was remanded to the lower Court for the trial of certain issues of fact, the case being in the meantime retained on the file of the Court. *Held* that the order was not appealable under cl. 15 of the Letters Patent. *KALIERISTO PAUL v. RAMCHUNDER NAG* [I. L. R., 8 Calc., 147 : 9 C. L. R., 461]

10. ———— *Civil Procedure Code, ss. 629, 632—Appeal from one Judge of High Court.*—Cl. 15 of the Letters Patent for the High Court of Judicature at Madras, which allows an appeal to the High Court from the judgment of one Judge of that Court, is controlled by s. 629 of the Code of Civil Procedure, which provides that an order of a Civil Court rejecting an application for review of judgment shall be final. *ACHAYA v. RATNAVELU* [I. L. R., 9 Mad., 253]

11. ———— *Civil Procedure Code, ss. 588, 592—Order of Judge of High Court rejecting application for leave to appeal as a pauper.*—Cl. 15 of the Letters Patent of the High Court at Madras being controlled by s. 588 of the Code of Civil Procedure, no appeal lies from the order of a single Judge of the High Court made under s. 592 of the Code of Civil Procedure rejecting an application for leave to appeal *in forma pauperis*. *IN RE RAJA-GOPAL* I. L. R., 9 Mad., 447

12. ———— *Appeal from decision of Division Bench in exercise of civil appellate jurisdiction.*—*Held* (*JACKSON, J.*, doubting) an appeal lies under cl. 15 of the Letters Patent, 1865, from the judgment (not being a sentence or order passed or made in any criminal trial) of a Division Court in the exercise of appellate jurisdiction, when the Judges of such Court are equally divided in opinion, and do not amount in number to a majority of the whole of the Judges. *SURMOYEE v. LUCHMEERUT DOOGUR* [B. L. R., Sup. Vol., 694 : 7 W. R., 52, 512]

13. ———— *Difference of opinion between Judges—Appeal.*—In cases heard by the High Court in its appellate jurisdiction, where the Judges are equally divided in opinion, a party desirous of appealing is bound to appeal under cl. 15 of the Letters Patent before he can appeal to the Privy Council. *COURT OF WARDS v. LEEBANUND SINGH* [14 W. R., 298]

14. ———— *Difference of opinion between Judges—Appeal.*—The difference of opinion between Judges constituting a Division Bench of the High Court, which entitles parties to an appeal to the High Court under cl. 15 of the Letters Patent, must be a difference of opinion as to the final and complete decision of the appeal, and not a difference of opinion

LETTERS PATENT, HIGH COURT, 1865

—continued.

upon one or more of the points arising in the appeal. *IN THE MATTER OF THE PETITION OF OMRAO BEGUM* [13 W. R., 310]

15. ———— *Appeal from an order of a single Judge of the High Court in the exercise of the Court's revisional or extraordinary jurisdiction.*—No appeal lies under cl. 15 of the Letters Patent from an order of a single Judge of the High Court dismissing an application for the exercise of the Court's extraordinary or revisional jurisdiction. The Letters Patent provide for an appeal only from a judgment passed in the original or appellate jurisdiction of the High Court. *HIRALAL v. BAI AST* [I. L. R., 22 Bom., 891]

16. ———— *Appeal from judgment of a single Judge made under Civil Procedure Code, s. 622.*—An appeal lies against an order made by a single Judge of the High Court under Civil Procedure Code, s. 622, when such order amounts to a judgment. *CHAPPAN v. MOIDIN KUTTI* [I. L. R., 22 Mad., 68]

17. ———— *Order of single Judge dismissing petition under Civil Procedure Code (Act XIV of 1882), s. 622.*—No appeal lies under Letters Patent, s. 15, against an order made by a single Judge dismissing an application under s. 622. *SRIRAMULU v. RAMASAM* I. L. R., 22 Mad., 109

18. ———— *Orders transferring case from Agency to District Court—Jurisdiction of High Court to transfer suit pending in the Agent's Court to the District Court—Indian Councils Act (24 & 25 Vict., c. 67), s. 25.*—An order was made by a single Judge, by consent of the parties, transferring a case from the Court of an Agent to the Governor, Vizagapatam, to a District Court. A further order was made by a single Judge which, though in form an order dismissing a review petition against the first-mentioned order, was in substance an adjudication upon the question whether the High Court has jurisdiction to order the transfer of a suit from the Court of such an Agent to a District Court. *Held* that both orders were "judgments" within the meaning of s. 15 of the Letters Patent, and that an appeal lay therefrom. *MAHARAJAH OF JESSORE v. PARAYAMMA* I. L. R., 23 Mad., 329

19. ———— *Judgment—Appeal—Appealable order—Order rejecting review.*—An order passed by the senior of two Judges of a Division Bench who differed in opinion, dismissing an application for the review of their judgment, is not appealable. Such an order is not a judgment within the meaning of cl. 15 of the Letters Patent. *RAJU BIBI v. MAHOMED MUSA KHAN* [4 B. L. R., A. C., 10]

S. C. RUGHOO BIBEK v. NOOR JEHAN BEGUM [12 W. R., 459]

20. ———— *Appeal—Difference of opinion between Judges in review.*—Where two Judges of a Division Bench have concurred in a final decree, the fact that there is a difference of opinion as to one point, amongst others, raised in review or

LETTERS PATENT, HIGH COURT, 1865

—continued.

He
of
Council, refusing to
restoring a decree, is a judgment within the meaning
of cl 15 of the Letters Patent of 1865, and is
appealable to the High Court. *Held* also that a
refusal to transmit such an order for execution was
not a misapprehension on the part of the Judge of the
extent of his jurisdiction, although, if it had been,
this itself would have been a ground of appeal.
HARIHAR CHANDER CHOWDHURY v KALISUNDERI
DEBI I. L. R., 9 Calc., 482; 12 C. L. R., 511

leaves to
the Judge
plaintiff
ance On
the lower

point of law was involved in the case. The defend-
ant appealed under cl 15 of the Letters Patent.
Held that no appeal would lie. **AMRANUNTA v**
BEHARY LALL, 25 W. R., 529, followed. **MALLY v**
PATTEESON

[I. L. R., 7 Calc., 339. 9 C. L. R., 189]

37. — *Appeal from order of*
Judge in Privy Council Department refusing to
extend time for furnishing security for costs—
'Judgment' Meaning of—No appeal will lie from
an order of a Judge in the Privy Council Department
refusing to extend the time prescribed by law within
which an appellant is required to furnish security for
the costs of the respondent, and directing the appeal
to be struck off by reason of such security not having

under cl 15 of the Letters Patent and is appeal-
able, but not otherwise. **KISHEN PERSHAD PAN-**
DAY v TILUCKDHARI LALL I. L. R., 18 Calc., 182

38. — *Order refusing to stay*
execution of decree for costs—Civil Procedure Code
(Act XIV of 1852), s 608—Security for costs—
Costs—An order refusing to stay execution in the
exercise of the discretion given to the Court under
s 608 of the Civil Procedure Code is not a decision
which affects the merits of any question between the

39. — *Appeal—'Judgment'*
—Order granting review of judgment—Civil

LETTERS PATENT, HIGH COURT, 1865

—continued.

two Judges from sitting, to which the matter came
up before them, when a rule was issued, calling
the
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dges
up,
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dges
up,
heard and made absolute by the other of the two
Judges sitting alone. *Held* that the order was not
a judgment within the meaning of cl 15 of the
Letters Patent, and that no appeal would lie there-
from the order being final under s 629 of the Code
of Civil Procedure. **BOMBAY PERSIA STEAM NAU-**
IGATION COMPANY v ZUARI I. L. R. 12 Bom.,
171, and **ACHAYA v RATNAVELU**, I. L. R., 9
Mad., 253 approved. **AMROY CHURN MONMUT v**
SHAMANT LOCHUN MONMUT

[I. L. R., 16 Calc., 788]

40. — *Appeal—Provincial*
Small Cause Courts Act (IV of 1857), ss 20 and
27—Order of Judge of High Court acting under
rules of Court under s 13 of the Charter Act (24
of 1853, c 104)—A petition for revision pre-
ferred under the Provincial Small Cause Courts
Act s 25, was heard and dismissed by one of the

was maintainable. **VENKATA REDDY v TAYLOR**

[I. L. R., 17 Mad., 100]

of the High Court in reversal of an order of a
first class Magistrate, had granted sanction under
the Criminal Procedure Code, s 195 for a prosecution
under the Penal Code, s 182, an appeal was preferred
from his judgment under the Letters Patent, cl 15,
Held that no appeal lay, that clause of the Letters
Patent being inapplicable in cases of criminal
jurisdiction. **SRINIVASA ATYANGAR v QUEEN EM-**
PIESS. I. L. R., 17 Mad., 105

book in an appeal from an original decree. **RAM-**
HARI SAKU v. MADAN MOHAN MITTER

[I. L. R., 23 Calc., 339]

43. — *Order on application under*
Probate and Administration Act (V of 1851), s 90,

LETTERS PATENT, HIGH COURT, 1865

—continued.

and made an order reversing the decree as to that, and calling for a report of what was due on the other piece of land. The plaintiff preferred an appeal under Letters Patent, s. 15. *Held* the above-mentioned order was subject to appeal as being a judgment. **VANANGAMUDI v. RAMASAMI**

[I. L. R., 14 Mad., 406]

30. ———— *Order discharging rule to show cause why minor should not be delivered to claimant—Judgment—Custody of minor—Criminal Procedure Code, 1882, s. 491.*—The petitioner as step-mother claimed to be entitled to the custody of her deceased husband's minor son, who was living with D, his maternal uncle. She obtained a rule calling upon D to show cause why the child should not be delivered to her. After argument, the rule was discharged. *Held* that the order discharging the rule was a judgment within the meaning of cl. 15 of the Letters Patent, 1865, and that therefore under that clause the petitioner had a right to appeal against the order. **IN THE MATTER OF NARRONDAS DHANJI.**

[I. L. R., 14 Bom., 555]

31. ———— *Act VI of 1874—Order granting appeal to Privy Council.*—Under cl. 15 of the Letters Patent, no appeal lies to the High Court from an order of the Judge in the Privy Council Department granting a certificate that a case is a fit case for appeal to Her Majesty in Council. **MOWLA BUKSH v. KISHEN PERTAB SAHI**

[I. L. R., 1 Calc., 102]

S. C. MOWLA BUKSH v. HODGKINSON

[24 W. R., 150]

32. ———— *Appeal from order of Judge in Privy Council Department—"Judgment," Meaning of.*—No appeal will lie from an order of a Judge granting a certificate that a case is a fit and proper one for appeal to the Privy Council. **LUTF ALI KHAN v. ASGUR REZA**

[I. L. R., 17 Calc., 455]

33. ———— *Appeal from order of Judge in Privy Council Department refusing certificate of appeal.*—The Judge in the Privy Council Department refused an application for a certificate, but was stopped from giving his reasons by the petitioner's counsel, who had hopes of making a compromise. The attempt at compromise having failed, the petitioner afterwards appealed under cl. 15 of the Letters Patent, when the Judge in the Privy Council Department was referred to, and was not able to deliver any judgment. *Held* that, under such circumstances, no appeal lay to the High Court. **TARA CHAND BISWAS v. RADHA JEEBUN MUSTOFE**

[24 W. R., 148]

34. ———— *Appeal from order of Judge granting certificate of appeal to Privy Council—Act VI of 1874.*—When an appeal was made from an order of a Judge of the High Court granting a certificate, under Act VI of 1874, to the effect that the subject-matter of a certain suit was of the

LETTERS PATENT, HIGH COURT, 1865

—continued.

value of Rs10,000, and thus allowing an appeal to the Privy Council,—*Held* by a Bench of the Court that, as Act VI of 1874 did not confer the right of such an appeal, it could only be allowed now if it could be shown that the right existed before the passing of that Act, and found that, as a matter of fact, such a right did not previously exist. Although, under cl. 15 of the Charter of 1865, an appeal is given to the High Court from any judgment of a single Judge, an order or certificate of a Judge allowing an appeal to the Privy Council cannot properly be considered a judgment of the High Court. Such an order has its origin in an Act of Parliament for the better administration of justice in the Privy Council, and belongs rather to Privy Council proceedings than to the legitimate province of the High Court. In this view it is immaterial whether an order and certificate are for admission or refusal of appeal to the Privy Council. **AMIRUNNISSA v. BHARY LALL, KESHUB CHUNDER ACHARJEE v. HURRO SOONDREE DEBEA**

[25 W. R., 529]

35. ———— *Order by Judge of the High Court presiding over the Privy Council Department—Judgment—Certified copy of order of the Privy Council—Civil Procedure Code (Act X of 1877), s. 610.*—A decree obtained on appeal by certain defendants in the High Court was appealed to the Privy Council by one only of the two plaintiffs to the suit, and the decision of the High Court was reversed; the plaintiff who had appealed assigned her share in the order of the Privy Council to one of the defendants, and delivered him the certified copy of the decree made in the Privy Council. The plaintiff who had not appealed to the Privy Council applied to the High Court for leave to transmit the order to the Court of first instance for execution of the share decreed to him, but, on account of the assignment abovementioned, was unable to produce the certified copy of the decree of the Privy Council. The Judge presiding over the Privy Council Department in the High Court held that the production of a certified copy of the order of the Privy Council was excusable under the circumstances, but refused the application, on the ground that the decree of the Court of first instance, which was affirmed by the Privy Council, could only be executed as a whole and not partly by one of the plaintiffs. *Held*, on appeal, *per* GARTH, C.J.—That the duties of a Judge in dealing with the meaning of decrees of the Privy Council are purely ministerial, and that any order made in such ministerial capacity could not be considered a judgment, and could not therefore be made the subject of an appeal to a Bench of the High Court under cl. 15 of the Charter. *Per* WHITE and MITTER, J.J.—An order of a Judge presiding over the Privy Council Department in the High Court, rejecting an application for execution, is a final order, and is a judgment within the meaning of cl. 15 of the Charter, and is therefore appealable. **IN THE MATTER OF THE PETITION OF KALLY SOONDERY DABIA, KALLY SOONDERY DABIA v. HURISH CHUNDER CHOWDHRY**

[I. L. R., 6 Calc., 594; 7 C. L. R., 543]

LETTERS PATENT, HIGH COURT, 1865

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[4 B L R, A C, 181 13 W R, 209

cl 16

See SUPERINTENDENCE OF HIGH COURT—
CHARTER ACT—CIVIL CASES

[7 W R 430

Power of High Court to hear appeals—Per MARKBY MITTIE and AINSLIE JJ
—Cl 16 of the Letters Patent of 1865 empowers the High Court to hear appeals in all cases in which an appeal lay under Act VIII of 1850. *PENNY BISHOP v. MERRIDAY & CO.*

[I L R, 3 Calo, 682 2 C L R, 391

cl 17

See GUARDIAN—APPOINTMENT

[I L R, 31 Calo, 206

I L R, 26 Calo, 133

3 C W N, 91

cl 18

See CASES UNDER INSOLVENT ACT § 5

cl 19

See CONTRACT ACT § 2: 14 B L R, 76

cl 24 (Bombay)

See HIGH COURT JURISDICTION OF—
BOMBAY—CRIMINAL

[I L R, 9 Bom, 288

cl 25

See CONFESSION—CONFESSIONS TO POLICE
OFFICERS I L R, 2 Bom, 61

cl 26

See APPEAL IN CRIMINAL CASES—CRIMI-
NAL PROCEDURE CODES

[2 Bom 112 2nd Ed, 106

See CHARGE TO JURY—MISDIRECTION

[I L R, 10 Calo, 1079

I L R, 17 Calo, 842

See MERCHANT SHIPPING ACT § 267

[I L R, 16 Calo, 238

Case certified by Advocate
General under—See CONFESSION—CONFESSIONS TO POLICE
OFFICERS I L R, 1 Calo, 207

[I L R, 2 Bom, 61

Prisoner sentenced by Sessions Judge to rigorous for an offence punishable only with simple imprisonment—Where the Judge at Sessions sentenced a prisoner to rigorous

I ED ALI KHAN

1 Ind Jur, N S, 424

LETTERS PATENT, HIGH COURT, 1865

—continued

3. *Charge under § 467, Penal Code—Felony or misdemeanour—Separation of jury—Where the Judge on a charge under § 467 of the Penal Code permitted the jury*

[3 Bom, Cr, 20

admitted could not reasonably be supposed to have influenced the jury as to the latter head of charge on which to set aside the conviction on that head of charge but should proceed to pass judgment and sentence on it. *See*—S 167 of the Evidence Act applies to criminal trials by jury in the High Court. *REG v. NAYTON DADABHAI* 9 Bom., 358

McGUIRE

4 C W N, 433

5. *Reserving point of law for High Court—Refusal to reserve—Discretion of Judge—Review—Non dissection—Certificate of Advocate General—The statement of a Judge who*

of the High Court and such discretion will not be

under cl 26 of the Letters Patent. *REG v. PESH-
TANJI DINGHA* 10 Bom, 76

cl 28

See HIGH COURT JURISDICTION OF—CAL-
CUTTA—CRIMINAL[I L R, 26 Calo, 746
3 C W N, 593

LETTERS PATENT, HIGH COURT, 1865

—continued.

—An order on an application under s. 90 of the Probate and Administration Act, at the instance of a beneficiary, where there was no restriction on the power of the executor to sell, is without jurisdiction, and appealable under cl. 15 of the Letters Patent. *Murish Chunder Chowdhry v. Kali Santari Dobi*, I. L. R., 9 Calc., 152, applied. IN THE GOODS OF INDRA CHANDRA SINGH. SARASWATI DAS v. ADMINISTRATOR GENERAL OF BENGAL

[I. L. R., 23 Calc., 580]

See FATEMUNNISA v. DEOKI PERSHAD

[I. L. R., 24 Calc., 350]

IKBAL HOSSAIN v. DEOKI PROSHAD

[I. C. W. N., 21]

44. ———— *Order of Judge of High Court on appeal against order of remand—Civil Procedure Code (1882), s. 588, cl. 25.*—There is no appeal under the Letters Patent, cl. 15, against an order of a single Judge passed under the Civil Procedure Code, s. 588, cl. 28. *VENKATAYAN v. RAMASAMI AYYAN* . I. L. R., 19 Mad., 422

45. ———— *Civil Procedure Code (1882), s. 588—Powers of Judge of High Court—Order on appeal from erroneous order of remand.*—A Judge of the High Court, when hearing an appeal under the Civil Procedure Code, s. 588, against an erroneous order of remand under s. 562, may, if he thinks fit, pass a final decree in the suit instead of merely remanding the suit to the lower Appellate Court. No appeal lies against such decree under the Letters Patent, cl. 15. *SANKARAN v. RAMAN KUTTI* [I. L. R., 20 Mad., 152]

46. ———— *Order of Judge of High Court dismissing appeal from order remanding case—Appeal—Civil Procedure Code (1882), s. 588.*—A District Munsif having dismissed a suit on a preliminary point, the District Court on appeal made an order remanding it to him to be disposed of on the merits. Against this order an appeal was preferred to the High Court, which came on for disposal before a single Judge, who delivered judgment dismissing it. Held that no appeal lay under the Letters Patent, cl. 15, against his judgment, such right of appeal being subject to the limitations on appeals prescribed by the Code of Civil Procedure. *Achaya v. Ratnandu*, I. L. R., 9 Mad., 253; *In re Rajagopal*, I. L. R., 9 Mad., 417; and *Sankaran v. Raman Kutti*, I. L. R., 20 Mad., 152, followed. *VASUDEVA UPADAYA v. VISVARAJA THIRTHASAMY* [I. L. R., 20 Mad., 407]

47. ———— *Order refusing application to commit for contempt—Appeal—Judgment.*—An appeal lies from an order refusing an application to commit for contempt of Court. *MOHENDRO LALL MITTER v. ANUNDO COOMAR MITTER* [I. L. R., 25 Calc., 236]

48. ———— *Appeal from order of refusal to send for records—Dismissal on ground that no appeal lies.*—An order refusing to send for the record on a petition filed under s. 25 of the Provincial Small Cause Courts Act, 1887, is not a

LETTERS PATENT, HIGH COURT, 1865

—continued.

judgment, and no appeal lies therefrom. *VENKATARAMA AYYAR v. MADALAI ANMAL*

[I. L. R., 23 Mad., 169.]

GURUPPA v. VENKATANARASIMHA BHUPALA BHALLEROW . I. L. R., 23 Mad., 170 note

49. ———— *Civil Procedure Code, 1882, s. 575—Right of appeal.*—S. 575 of Act XIV of 1882 does not take away the right of appeal which is given by cl. 15 of the Letters Patent. When the judgment of a lower Court has been confirmed under s. 575 of the Code of Civil Procedure, by reason of one of the Judges of the Appeal Court agreeing upon the facts with the Court below, an appeal will lie against such judgment, notwithstanding the terms of s. 575. *GOSSAMI SRI 103 SRI GRIDHARJI MAHARAJ TICKAIT v. PURUSHOTAM GOSSAMI* . I. L. R., 10 Calc., 814

50. ———— *Time for preferring appeal.*—An appeal under s. 15 of the Letters Patent from the judgment of a Division Bench of the High Court must be preferred within thirty days from the date of the judgment, unless good cause be shown to the contrary. IN THE MATTER OF *HURBUCK SINGH* . 11 W. R., 107

51. ———— *Filing petition of appeal—Practice.*—Per *PEACOCK, C.J.*, and *KEMP and MACPHERSON, JJ.*—A petition of appeal under cl. 15 of the Letters Patent, from a decision of an Appellate Division Bench, may be presented within thirty days from the time when the written judgments of the Division Bench are put in. The difference of practice on the original and appellate jurisdictions of the High Court contrasted. *HARRIS SING v. TULSI RAM SING* 5 B. L. R., 47

S. C. HURBUCK SINGH v. TOOLSEE RAM SAHOO [12 W. R., 458]

52. ———— *Arguments on appeal—Practice.*—On appeal under cl. 15 of the Letters Patent, no other points may be argued than those which were argued before the Division Bench. *HAJRA BEGUM v. KHAJA HOSEIN ALI KHAN* [4 B. L. R., A. C., 86]

HIRANATH KOER v. RAM NARAYAN SINGH [9 B. L. R., 274; 17 W. R., 318]

53. ———— *Civil Procedure Code, s. 257—Act XXIII of 1861, s. 23—Arguments on appeal—Practice.*—Cls. 15 and 36 of the Letters Patent of the High Court must be treated as qualifying s. 257 of Act VIII of 1859. Under the Letters Patent of 1865, in lieu of the former practice under Act XXIII of 1861, s. 23,—namely, that when the Appeal Court consisted of only two Judges, and there was a difference of opinion between them upon a point of law, the case was re-argued upon that question before one or more of the other Judges,—when the Judges of a Division Court are equally divided in opinion as to the decision to be given on any point, the opinion of the senior Judge is to prevail, subject, however, to a right of appeal from such judgment of the Division Court. The judgment passed on such appeal, and not the judgment of the

**LETTERS PATENT, HIGH COURT,
N.-W. P.—continued.**

See REVIEW—GROUND FOR REVIEW.

[I. L. R., 11 All, 178]

See RULES OF HIGH COURT, N.-W. P.

[I. L. R., 9 All, 115]

1. ———— *Appeal from judgment of
Division Court*—To allow of an appeal to the High

Judges who may compose the Division Court as
disposes of the suit on appeal before it. *GIRAS
RAM v. NURAJ BEGAM* . . . I. L. R., 1 All, 31

the High Court for the N. W. P., from an order of a
single Judge refusing an application for leave to

[I. L. R., 11 All, 375]

3. ———— *Order of a single Judge of
the High Court amending an appellate decree—
Appeal from such order—Civil Procedure Code,
ss. 206, 582, 632*—Whether an order made by a
single Judge of the High Court, directing the amend-
ment of a decree passed in appeal by a Division
Bench of which he had been a member, is an order
made under s. 206 read with ss. 582 and 632 of the

and from such order no appeal under s. 10 of the
Letters Patent will lie. *Hurrik Chunder Chowdhry
v. Kali Sundari Debia*, I. L. R., 9 Calc., 482.
I. L. R., 10 I. A., 4, discussed MUHAMMAD NAIM-
ULLAH KHAN v. HIRAN-ULLAH KHAN

[I. L. R., 14 All, 226]

4. ———— *Civil Procedure Code,
ss. 556, 558, and 558, cl. 27—Dismissal of appeal*

procedure provided by s. 558 of the, said Code.
POKAR SINGH v. GORAL SINGH

[I. L. R., 14 All, 361]

5. ———— *Civil Procedure Code, ss. 2,*

missing an appeal for default. The decision of a
Court dismissing a suit or an appeal for default is an

**LETTERS PATENT, HIGH COURT,
N.-W. P.—continued.**

7. ———— *Difference of opinion between
Judges of Division Bench—Held (SPANKE, J.,
dissenting) that the appeal given to the Full Court
under cl. 10, Letters Patent, is not confined to the
point on which the Judges of the Division Court
differ.* *RAM DIAL v. RAM DAS*

[I. L. R., 1 All, 181]

8. ———— *Difference of opinion in
Division Bench—"Judgment"*—Where the Judges
of a Division Bench hearing an appeal differed in
opinion, one of them holding that the appeal should
be dismissed as barred by limitation, and the other
that sufficient cause for an extension of time had

appeal to the Division Bench stood dismissed, an
appeal under s. 10 was not premature. *HUSAINI
BEGAM v. COLLECTOR OF MOZAFFARNAGAR*

[I. L. R., 9 All, 655]

9. ———— *Order under Civil Proce-
dure Code (1882), s. 312—Civil Procedure Code
(1882), ss. 256 and 558—Assignment of villages to
Hindu widow in lieu of maintenance—Attachment
and sale of such villages in execution of money
decree—Objection by widow after sale allowed—
Appeal from order allowing objection—Certain
villages were assigned for her maintenance to a
Hindu widow by members of her husband's family.
These villages were subsequently attached and sold
in execution of a simple money decree against the
widow. After the sale had become final, the widow
came forward with an objection to the attachment*

LETTERS PATENT, HIGH COURT, 1865

—continued.

See HIGH COURT, JURISDICTION OF—
MADRAS—CRIMINAL.

[I. L. R., 14 Mad., 121

cl. 29.

See CASES UNDER TRANSFER OF CRIMINAL
CASE—LETTERS PATENT, HIGH COURT,
CL. 29.

cl. 36.

See APPEAL IN CRIMINAL CASES—PROCEDURE.

[2 B. L. R., F. B., 25; 10 W. R., Cr., 45

1. ——— Division Bench of two
Judges differing in opinion—Practice of Privy
Council.—A cause was heard before a single Judge of
the High Court, and a decree made by him dismissing
the suit. An appeal was made to the same Court in
its appellate jurisdiction before two Judges. The
Court was divided in opinion; the Chief Justice
holding that the judgment should be reversed, and
the Puisne Judge that it should be affirmed; and
under the 36th section of the Letters Patent of 1865
creating the High Court a decree of reversal was
ordered. On appeal, the Judicial Committee, without
expressing any opinion whether the 36th section was
applicable, having regard to the 26th Rule of the
High Court, directed the appeal to be heard on the
merits. MILLER v. BARLOW

[14 Moore's I. A., 209

2. ——— Civil Procedure Code, 1877,
ss. 575 and 647.—The provision of the Letters Pat-
ent of 1865, s. 36, that when the Judges of a
Division Bench are equally divided in opinion, the
opinion of the senior Judge shall prevail, has been
superseded by s. 575 of the Civil Procedure Code (Act
X of 1877, which is extended to miscellaneous pro-
ceedings of the nature of appeals by s. 647 of that
Code) so far as regards cases to which s. 575 is appli-
cable. APPAJI BHIVRAB v. SHIVLAL KHURCHAND

[I. L. R., 3 Bom., 204

3. ——— Criminal Procedure Code,
1882, s. 429—Difference of opinion between Judges
of Division Bench of High Court—Practice—Proce-
dure.—Where the Judges of the High Court differed
in opinion in a case referred by a Sessions Judge to the
High Court under s. 307 of the Criminal Procedure
Code (Act X of 1882), the Court (JARDINE and
CANDY, JJ.) directed that the case should be laid
before a third Judge of the High Court, being of
opinion that the Criminal Procedure Code overrules
the provisions of cl. 36 of the Letters Patent, 1865.
QUEEN-EMPRESS v. DADA ANA

[I. L. R., 15 Bom., 452

cl. 37—Discretion as to costs in
civil suits.—The 37th clause of the Letters Patent
constituting the High Court does not give the Court
an uncontrolled discretion as to costs in civil suits.
SUBAPATI MUDALIYAR v. NARAYANNAI MUDA-
LIYAR 1 Mad., 115

LETTERS PATENT, HIGH COURT, 1865

—concluded.

cl. 39.

See APPEAL TO PRIVY COUNCIL—CASES IN
WHICH APPEAL LIES OR NOT—APPEAL-
ABLE ORDERS . . . 1 B. L. R., F. B., 1

[7-B. L. R., 730

13 B. L. R., 103

I. L. R., 1 Calc., 431

1 W. R., Mis., 13

5 W. R., Mis., 17

I. L. R., 22 Calc., 928

See APPEAL TO PRIVY COUNCIL—CASES IN
WHICH APPEAL LIES OR NOT—VALUA-
TION OF APPEAL . . . 19 W. R., 191

cl. 40.

See APPEAL TO PRIVY COUNCIL—CASES IN
WHICH APPEAL LIES OR NOT—APPEAL-
ABLE ORDERS . . . 9 Bom., 398

[I. L. R., 22 Calc., 928.

cl. 41.

See APPEAL TO PRIVY COUNCIL—CRIMINAL
CASES . . . 7 Bom., Cr., 77

cl. 42.

See APPEAL TO PRIVY COUNCIL—CASES IN
WHICH APPEAL LIES OR NOT—APPEAL-
ABLE ORDERS . . . 1 B. L. R., F. B., 1

LETTERS PATENT, HIGH COURT, N.-W. P.

cl. 2.

See HIGH COURT, CONSTITUTION OF.

[I. L. R., 9 All., 675

cls. 7 and 8.

See ADVOCATE . . . I. L. R., 9 All., 617

cl. 8.

See PLEADER—REMOVAL, SUSPENSION, AND
DISMISSAL . . . I. L. R., 17 All., 498

[I. L. R., 22 I. A., 193

Appeal—Presentation of appeal
by a person other than an advocate, vakil, or attor-
ney of the Court, or a suitor.—Held that the
presentation of an appeal by a person who was not an
advocate, vakil, or attorney of the Court, nor a suitor,
is not a valid presentation in law, having regard to
s. 8 of the Letters Patent of the High Court.
SHIAM KABAN v. RAGHUNANDAN PRASAD

[I. L. R., 22 All., 331

cl. 10.

See COURT FEES ACT, 1870, SCH. I, ART. 5.
[I. L. R., 11 All., 178

See LIMITATION ACT, 1877, s. 12.

[I. L. R., 2 All., 192

See REMAND—PROCEDURE ON REMAND.
[I. L. R., 16 All., 306

LETTERS PATENT, HIGH COURT, N-W P—concluded

[L L R., 11 All, 176

— cl 31.

See APPEAL TO PRIVY COUNCIL—CASES IN
WHICH APPEAL LIES OR NOT—APPEAL
ABLE ORDERS L L R., 1 All, 726

LEX FORI.

See LIMITATION—LAW OF LIMITATION
[5 Moore's L A, 234

See RIGHT OF SUIT—CONTRACTS AND
AGREEMENTS L L R., 17 Mad., 262

LIBEL

See CASES UNDER DEFAMATION

See PRIVILEGED COMMUNICATION
[L L R., 13 Mad., 374

— Restraining publication of—

See INJUNCTION—SPECIAL CASES—PUBLIC
OFFICERS WITH STATUTORY POWERS
[L L R., 1 Bom., 132

1 ——— Comments on acts of public

LIBEL—c *ntinued*

from their workmen, and otherwise mismanaged the factory On further enquiry and inspection of *W M*'s books his suspicions being confirmed he communicated them by letter to the resident director The company having declined to prosecute *L M* presented a charge of breach of trust against *W M* on which he was arrested and after a magisterial enquiry the charge was dismissed It appeared from the evidence that the defendant had reasonable and probable cause for supposing that the plaintiff was guilty of the misconduct he was charged with and there

COMM. v. ...
it the employers having declined to an enquiry is to be made into the motives that prompted him to do so.
MILLS : MITCHELL Bourke, O C, 18

4 ——— Statements made
by defendants to protect their own interest—Plaintiffs and defendants were the members of two firms each creditors of an absconded debtor one B The

for sums greatly in excess of their just claims against him The Judge found that there was no malice in fact but that the statements were untrue and calcu

and reasonable purpose of protecting their own interest HINDS : BAILEY L L R., 3 All, 13

1873) bound to keep minutes of their proceedings and resolutions and to forward copies of such minutes

of this resolution made by clerks in the employ of the Trustees were recorded in two books kept in the office of the Trustees and other copies also made by such clerks were forwarded to the Secretary to the Local Government and to the plaintiff himself Held first, that the words of the resolution amounted in law

HOWARD : NICOLL 1 Bom., Ap, 85

2 ——— Defamatory communications
by Consul to his Government—Privileged
communications—Limitation—Where the Consul of

for a long time subsequently the suit for damages must be dismissed under the Statute of Limitation is which confined the bringing of such suit within the year Held that such communications were not privileged and the Court assessed damages subject to the opinion of the Appellate Court on the point of limitation. ROBERT : LAMBARO

[1 Ind Jur, N S, 192

3 ——— Privileged communication—
Malicious prosecution—Reasonable and probable
cause—*L M* an inspector of the *O G Co* on
visiting the company's works at *N* was informed
that the superintendent *W M* had misappropriated
the company's money and obtained money wrongfully

LETTERS PATENT, HIGH COURT, N.-W. P.—continued.

order asked for by the widow's application was practically an order under s. 312 of the Code of Civil Procedure, an appeal under cl. 10 of the Letters Patent would not lie. **BANSHIDHAN v. GULAB KUAN**
[I. L. R., 18 All., 443]

10. ———— *Order refusing extension of time for serving notice of appeal—Application under Companies Act (VI of 1882), s. 169—Direction of Court Judgment.*—No appeal will lie under s. 10 of the Letters Patent of the High Court of Judicature for the N.-W. P. from an order of a single Judge of the Court refusing an application under s. 169 of Act VI of 1882 (Indian Companies Act) for extension of time for serving notice of an appeal under that Act; such order not being a judgment within the meaning of cl. 10 of the Letters Patent. **Banno Bihari v. Mohd. Hossain**, I. L. R., 11 All., 375; **Muhammad Naimullah Khan v. Ibrahimullah Khan**, I. L. R., 11 All., 226; **Kishen Pershad Panday v. Tiluckdhari Lal**, I. L. R., 18 Cal., 183; **Lutf. Ali Khan v. Agar Raza**, I. L. R., 17 Cal., 455; **Harris Chander Chowdry v. Kali Sunder Debba**, I. L. R., 9 Cal., 482; I. L. R., 10 I. A., 4; **Mohshar Prasad Singh v. Adhikari Kunwar**, I. L. R., 21 Cal., 473; **Lane v. Esdaile**, L. R. (1891), 1p. Cas. 10; **Kay v. Briggs**, L. R., 21 Q. B. D., 313; **The Amestil**, L. R., 2 P. D. N. S., 186; and *Ex-parte Stevenson*, L. R. (1892), Q. B. D., Vol. I., 291, referred to. **WALL v. HOWARD** . . . I. L. R., 17 All., 438

11. ———— *Order granting probate—Probate and Administration Act (I of 1881), ss. 51-57—"Decree"—Civil Procedure Code (1882), ss. 2 and 591—Appeal—Finding of fact, Power of Appellate Court as to.*—An appeal will lie under cl. 10 of the Letters Patent of the High Court of Judicature for the N.-W. P. from the judgment of a single Judge of the Court in appeal from an order of a District Judge granting probate of a will under Ch. V of Act V of 1881; and the Bench hearing such an appeal under cl. 10 of the Letters Patent is not debarred from reconsidering the findings of fact arrived at in the judgment under appeal. **UMRAO CHAND v. BINDRABAN CHAND**
[I. L. R., 17 All., 475]

12. ———— *Arguments in appeal—Points on which appellant may be heard—Practice.*—In appeals under the Letters Patent, s. 10, an appellant is not entitled to be heard on points which he has not raised before the Judge against whose decree he is appealing. **BRIJ BHUKHAN v. DURGA DAT** . . . I. L. R., 20 All., 258

13. ———— *Plaint disclosing no cause of action—Discovery at the stage of an appeal under the Letters Patent of defect in the plaint—Dismissal of suit.*—Where in an appeal under s. 10 of the Letters Patent it was brought to the notice of the Court that the plaint in the suit disclosed no cause of action against the defendant named therein, the Court entertained the plea and dismissed the suit. **SECRETARY OF STATE FOR INDIA v. SUKIDEO**
[I. L. R., 21 All., 341]

LETTERS PATENT, HIGH COURT, N.-W. P.—continued.

— cl. 12—*Lunatic—Native of India—Act XXXI of 1858, s. 23—Original jurisdiction of High Court in respect of the persons and estates of lunatics who are natives of India.*—The High Court has not, under cl. 12 of its Charter, any original jurisdiction in respect of the persons and estates of lunatics who are natives of India. **IN THE MATTER OF THE PETITION OF JAUNDHA KUAN**
[I. L. R., 4 All., 150]

cls. 18 and 19.

See REVIEW—CRIMINAL CASES.

[I. L. R., 7 All., 672]

cl. 27.

See REFERENCE FROM SUDDEN COURT,
AGRA . . . 8 B. L. R., 283

[13 Moore's L. A., 585]

1. ———— 24 & 25 Vict., c. 101, s. 13—*Difference of opinion between Judges of Division Bench.*—S. 13 of Act 24 & 25 Vict., c. 101, and s. 27 of the Letters Patent of the High Court, applied to the Court in its revisional as well as in its appellate jurisdiction. *Held* by MORGAN, C.J., and TURNER, J. (ROSS and SPANKIE, JJ., dissenting), that when a case is heard by a Division Bench, and a difference of opinion arises, the opinion of the senior Judge must prevail, and the order must issue in accordance with his judgment, a reference to a third Judge being beyond the competency of such Division Bench, and an order in accordance with the views of such third Judge and the junior Judge was not valid. **QUEEN v. NYN SINGH** . . . 2 N. W., 117
[S. C. Agra, F. B., Ed. 1874, 196]

2. ———— *Practice—Difference of opinion on Division Bench regarding preliminary objection as to limitation—Civil Procedure Code, s. 575.*—S. 27 of the Letters Patent for the High Court of the N.-W. P. has been superseded in those cases only to which s. 575 of the Civil Procedure Code properly and without straining language applies. There are many cases to which s. 575, even with the aid of s. 617, does not apply; and to these s. 27 of the Letters Patent is still applicable. One of the cases to which s. 575 of the Code does not apply is where a preliminary objection being taken to the hearing of a first appeal before the High Court on the ground that the appeal is time-barred, the Judges of the Division Bench differ in opinion as to whether the appellant has shown sufficient cause, within the meaning of s. 5 of the Limitation Act (XV of 1877), for not presenting the appeal within the prescribed period. The decision of such a preliminary objection is not a "hearing" of the appeal, but precedes the hearing, or determines that there is no appeal which the Court can hear or decide. Where such a preliminary objection is allowed, it cannot be said that the Court which, by reason of the Limitation Act, has no jurisdiction to hear the appeal, should nevertheless "affirm" the decree of the Court below. In the case of such a preliminary objection and such a difference of opinion (the Bench being equally divided), the opinion of the senior Judge should, under s. 27 of the Letters Patent, prevail. *Appaji*

BEL—concluded.

are the plaintiff, and bring him into public scorn
and into public scorn

[10 B L R., 110 ..]

LIBERTY TO APPLY

See DECREE—LITIGATION OR AMEND-
MENT OF DECREE

[I L R., 15 Calc., 211]

LICENSE

— Breach of conditions of—

See CONTRACT ACT, s 23—ILLEGAL COV-
TRACTS—GENERALLY

[I L R., 10 All., 577
I L R., 12 Bom., 422]

— Date of taking out—

See CALCUTTA MUNICIPAL CONSOLIDA-
TION ACT s 335

[I L R., 24 Calc., 360]

— False statement in application
for—

See BENGAL MUNICIPAL ACT 1884, s 133
[I L R., 22 Calc., 131]

— for building

See MADRAS DISTRICT MUNICIPALITIES
ACT, 1884, s 180

[I L R., 16 Mad., 330]

— Necessity for—

See POLICE ACT (VI VIII of 1860) s 11
[I L R., 15 Bom., 630]

— Obligation to grant—

See BENGAL MUNICIPAL ACT 1884 s 333
[I L R., 17 Calc., 329]

See HIGH COURT JURISDICTION OF—
CALCUTTA—CIVIL

[I L R., 17 Calc., 329
I L R., 21 All., 348]

— Power to grant or refuse—

See BENGAL MUNICIPAL ACT 1884 s 337
[I L R., 20 Calc., 654]

— to accommodate pilgrims

See N W P AND OUDH LOADING HOUSE
ACT

[I L R., 20 All., 534]

— to keep animals

See CALCUTTA MUNICIPAL CONSOLIDATION
ACT, s 307

[I L R., 25 Calc., 625]

LICENSE—continued

— to practise as a pleader, With-
drawal of—

See RECORDER s ACT, s 17

[6 B L R., 180]

— to quarry

See CONTRACT—CONSTRUCTION OF COV-
TRACTS

[I L R., 13 Bom., 630]

— to sell liquor

See BENGAL EXCISE ACT XXI of 1866

[8 W. R., Cr., 4]

10 W. R., Cr., 60

10 W. R., Cr., 34

25 W. R., Cr., 42

See EXCISE ACT

[I L R., 1 All., 630, 635, 638]

See MANDAMUS

11 B L R., 250

— to sell opium

See OPIUM ACT

13 C L R., 338

[I L R., 13 Mad., 191]

[I L R., 26 Calc., 571]

— to use land of another

See USER, RIGHT OF

[I L R., 18 Calc., 640]

certain payment in respect of each elephant which was captured. In 1884 without the knowledge of the owner of the forest the other party by a similar instrument gave permission to the defendant to trap ten elephants. The instrument of 1883 was expressed to be in force for six years, that of 1884 for four years. The latter instrument was not ratified by the owner of the forest who in 1885 granted the exclusive right of trapping elephants to the plaintiff. The plaintiff now sues the defendant for possession of two elephants which had been captured by him. Held that the instrument of 1883 was a license merely and that since the owner of the forest had never consented to or ratified the instrument of 1884 the plaintiff was entitled to a decree. RAMAKRISHNA V. SANKAR [I L R., 16 Mad., 290]

2 — Right of growing rice plants in another's land to be afterwards transplanted to his own—Easements Act (V of 1882), ss 4 and 52. A license as defined by s. 53 of the Indian Easements Act (V of 1882) is not, as in the case of an easement connected with the ownership of any land but creates only a personal right or obligation. License rights are not generally transferable, and the transferee is not bound to continue the license granted by the former owner, while easements once established follow the property. The plaintiff claimed and proved a prescriptive right of using a certain land

LIBEL—continued.

to a libel; second, that the act of the Trustees, in transmitting a copy to the Secretary to the Local Government, was a publication of the libel; third, that such publication was privileged. *Quare*—Whether the giving of the resolution to be copied by clerks of the defendants was a publication; but if it were,—*Held* that such a publication was also privileged. *Semble*—That had the defendants succeeded on the plea of privilege only, each party should have borne their own costs, but held that, as the plaint contained allegations of express malice and want of *bond fides* on the part of the Trustees in passing and publishing the libellous resolution complained of, which allegations obliged the Trustees to plead justification, on which plea also they were successful, the plaintiff must pay the costs of the suit. *SHEPHERD v. TRUSTEES OF THE PORT OF BOMBAY*

[I. L. R., 1 Bom., 477]

6. ————— *Letter given by manager of firm to clerk to copy—Reflections on professional man.*—Defamatory matter is privileged only when written *bond fide* and shown to a third party to give information which the third party ought to have. A letter was written by order of the manager of a firm reflecting upon the character of a professional man, and signed by the manager and handed over in the ordinary way to a clerk in the office to copy in the office copy letter book, which was open to all the members of the firm. *Held* that such instructions to copy amounted to publication. *HECKFORD v. GALSTIN* . . . Cor., 134; 2 Hyde, 274

7. ————— *A brought an action against B for damages for defamation of character.* The alleged libel was contained in a letter written and sent as an ordinary private letter by post by B to A. No publication was alleged or proved, and the only damage alleged was injury to A's feelings. *Held* that the suit was rightly dismissed. *KAMAL CHANDRA BOSE v. NABIN CHANDRA GHOSE* . . . 1 B. L. R., S. N., 12; 10 W. R., 184

MAHOMED ISMIL KHAN v. MAHOMED JAHIR alias MOTEE MEAN . . . 6 N. W., 38

8. ————— *Libel in judicial proceedings—Privilege of parties and witnesses in suit—Right of suit—Liability to damages by civil action for such defamation.*—No action for slander lies for any statement in the pleadings or during the conduct of a suit against a party or witness in it. The plaintiff claimed to recover damages from the defendants for publishing defamatory matter in an application they had filed in a suit brought against them by one M, in which the plaintiff was described by the defendants as a person "whose occupation it was to obtain his living by getting up such fraudulent actions," and that he was induced to make a false claim by the plaintiff. The application appeared to have been made with the object of having other persons made parties to that suit. *Held* that the defendants were privileged against a civil action for damages for what they may have said of the plaintiff in the application they had presented in that suit. *Seaman v. Netherclift, L. R., 1 C. P. D., 45, and Gunnessh Dutt Singh v. Mugneeram Chowdhry,*

LIBEL—continued.

11 B. L. R., 321, followed. *NATHJI MULESHVAR v. LALBHAI RAVIDAT. LALBHAI RAVIDAT v. NATHJI MULESHVAR* . . . I. L. R., 14 Bom., 97

9. ————— *Defamatory statement in judicial proceeding—Privilege—Liability for damages in a civil action.*—A defamatory statement made in the pleadings in an action is not absolutely privileged. *Nathji Muleshvar v. Lalbhai Ravidat, I. L. R., 14 Bom., 97*, dissented from. *AUGADA RAM SHAHA v. NEMAI CHAND SHAHA*

[I. L. R., 23 Calc., 867]

10. ————— *Defamatory statement made by one newspaper copied into another and commented upon as untrue—Retention of libel—Malice.*—A certain newspaper called the *Rajya Bhakta* published a false and defamatory statement of the plaintiff. More than a month afterwards the defendants published an article in their newspaper, the *Jam-e-Jamshed*, calling attention to the statement made in the *Rajya Bhakta* and repeating it. The article, however, declared that the said statement was "evidently false." It pointed out that the defendants were the first to raise an outcry against it; that they had expected the plaintiff to take notice of it, but that, as he had not done so, they published that intimation to the public. The plaintiff sued the defendants for libel. He alleged that he had not taken any notice of the original statement in the *Rajya Bhakta*, as that paper was an obscure print not generally read in the Parsi community to which both he and the defendants belonged. He complained that, the defendants had maliciously repeated and called attention to libel in their paper for the purpose of giving it a wide circulation, and that their assertion of its untruth was made merely in order to protect themselves. The defendants pleaded that the article in their paper was not defamatory and denied malice. *Held* that, reading the article as a whole and in its natural sense, and taking it in connection with previous articles appearing in the defendants' paper with reference to the plaintiff, it was in itself defamatory of the plaintiff. *KARHUSRU NAOROJI KABRAJI v. JEHANGIR BYRAMJI MURZBAN* . . . I. L. R., 14 Bom., 532

11. ————— *Proof of injury to plaintiff—Loss of caste—Malice.*—Suit for libel in describing the plaintiff, who was a Jomppure bunniah, as a Telee whereby the plaintiff lost his caste, etc. The alleged libel was contained in an answer to a suit. *Held* that the action was not maintainable, as it did not appear that the plaintiff had lost his caste or otherwise been damaged, or that the defendant had knowingly misdescribed the plaintiff. *FUTTECK CHUND SAHOO v. MAKUND JHA Marsh., 224; 1 Hay, 539*

12. ————— *Rejection of plaint—Ironical publication.*—On the presentation of a plaint for libel, the Court must see whether the alleged libellous matter set out in the plaint is really libellous: if it is not, there is no ground of action, and the plaint ought not to be admitted. If the words which are set out in the plaint are not a libel, the plaintiff cannot, by alleging that they were printed and published by the defendant with the intent to

LICENSE—concluded.

belonging to the defendant's mortgagor for a certain part of the year for raising rice plants to be afterwards transplanted to his own land. *Held* that the right was clearly enjoyed by the plaintiff as owner of some land to which the young rice plants were transplanted, and that such a right, so attached to plaintiff's land, was not a license, but an easement of the nature of profits *a prendre*. *SUNDRABAI v. JAYAWANT* . . . I. L. R., 23 Bom., 397

LICENSEE.

See PATENT . . I. L. R., 15 Calc., 244

LIEN.

See BAILMENT . . I. L. R., 6 All., 139

See C-SHARERS—GENERAL RIGHTS IN JOINT PROPERTY . 14 B. L. R., 155
[I. L. R., 9 Calc., 377
I. L. R., 14 Calc., 809
I. L. R., 11 Bom., 313
I. L. R., 16 Calc., 323
I. L. R., 22 Calc., 800
I. L. R., 14 All., 273]

See CASES UNDER DEPOSIT OF TITLE-DEEDS.

See CASES UNDER MORTGAGE—MONEY-DECREES ON MORTGAGES.

See CASES UNDER VENDOR AND PURCHASER—LIEN.

— by custom for price of seed.

See INDIGO FACTORY.

[I. L. R., 3 Calc., 231]

— Enforcing or removing—

See CASES UNDER DECLARATORY DECREE; SUIT FOR—ENFORCING OR REMOVING LIEN OR ATTACHMENT.

— for disbursements.

See BOTTOMRY BOND . 6 B. L. R., 323

— for master's wages.

See BOTTOMRY BOND . 5 B. L. R., 258

— for unpaid purchase-money.

See CASES UNDER VENDOR AND PURCHASER—VENDOR, RIGHTS AND LIABILITIES OF.

— of Attorney for costs.

See ATTORNEY AND CLIENT.

[10 B. L. R., 444
15 B. L. R., Ap., 15
I. L. R., 6 Calc., 1
I. L. R., 4 Bom., 353
I. L. R., 16 Calc., 374]

See CASES UNDER COSTS—SPECIAL CASES—ATTORNEY AND CLIENT.

LIEN—continued.

— of banker.

See BANKERS . I. L. R., 19 Mad., 234

1. — Creation of lien—*Agreement for specific appropriation—Possession.*—To constitute a lien on any property, there must be a clear agreement for the specific appropriation of the property; and, further, the property must be in the possession of the party who claims the lien. *IN RE THE CLAIM OF DADIA BIBBE, DEBNARAIN BOSE v. LEISK*

[2 Hyde, 267]

2. — *Contract between Hindus—Deposit of title-deeds.*—A lien created by verbal contract and deposit of title-deeds of immovable property in the Island of Bombay by a Hindu in favour of a Hindu upheld. *JIVANDAS KESHAVJI v. FRANJI NANABHAI* . . 7 Bom., O. C., 45

3. — *Deposit of shares for special purpose.*—Where certain shares were deposited with a bank as security for the depositor overdrawing his account for a time, which, in fact, he never did, and other documents were deposited as security for drafts drawn on Eccles, Cartwright & Co., against cotton, to which these latter documents referred, and Eccles, Cartwright & Co. failed,—*Held* that the bank had no lien on the shares in respect of the cotton transactions. *GENTLE v. BANK OF HINDOSTAN, CHINA, AND JAPAN*

[1 Ind. Jur., N. S., 245]

4. — *Existence of lien—Deposit of shares with power of sale—Unjustifiable revocation of power—Effect of, on right of lien.*—The defendant, being largely indebted to the plaintiff company, had, from time to time prior to the 22nd November 1865, deposited with them certain shares and share certificates in various joint-stock companies as security for the repayment (as alleged by the plaintiffs) of all moneys due or which might hereafter become due from time to time to them for principal and interest, and had executed several powers of sale and transfers and letters of pledge in favour of the plaintiffs. On the 22nd November 1865, the defendant executed a power of attorney authorizing the plaintiffs to sell or dispose of the said shares and gave them a promissory note for Rs. 1,90,000 with interest at 11 per cent. per annum. Between the 22nd November and 2nd January 1866, the plaintiffs caused their right of lien over the said shares to be registered by the various joint-stock companies concerned. On the 1st February 1866, the defendant, being found on adjustment of accounts to be indebted to the plaintiffs for Rs. 1,82,173, and being pressed for payment, gave them a second promissory note for that amount with interest at 12 per cent. per annum. On taking the second note, the plaintiffs gave up the first one and put a receipt on the back of it. In April 1870, the defendant wrote to the plaintiffs revoking the power-of-attorney given by him to the plaintiffs, publicly notified such revocation, and refused to pay the debt on the ground that it was barred by limitation. In a suit by the plaintiffs for the amount of the debt, and for a declaration of their right of lien and power of sale over the shares pledged with them by the defendant, and for an order for a sale of

LIBEL—concluded

injure the plaintiff and bring him into public scandal and disgrace and to expose him to public scorn and ridicule and to cause it to be suspected that the plaintiff was a dishonest person and had been actuated by sinister and fraudulent motives make them a libel nor can the plaintiff allege that words are spoken ironically make them libellous if they do not appear to the Court to be so. *WYMAN & BARKES*
[10 B L R., 71 18 W R., 518]

LIBERTY TO APPLY

See DECREE—ALTERATION OR AMENDMENT OF DECREE
[I L R., 15 Calc., 211]

LICENSE

— Breach of conditions of—

See CONTRACT ACT s 23—ILLEGAL CONTRACTS—GENERALLY
[I L R., 10 All., 577
I L R., 12 Bom., 422]

— Date of taking out—

See CALCUTTA MUNICIPAL CONSOLIDATION ACT s 33
[I L R., 24 Calc., 380]

for— False statement in application

See BENGAL MUNICIPAL ACT 1884 s 133
[I L R., 22 Calc., 131]

for building

See MADRAS DISTRICT MUNICIPALITIES ACT 1864 s 180
[I L R., 16 Mad., 230]

— Necessity for—

See POLICE ACT (XLVIII of 1860) s 11
[I L R., 15 Bom., 530]

— Obligation to grant—

See BENGAL MUNICIPAL ACT 1884 s 339
[I L R., 17 Calc., 329]

See HIGH COURT JURISDICTION OF—
CALCUTTA—CIVIL

[I L R., 17 Calc., 329
I L R., 21 All., 348]

— Power to grant or refuse—

See BENGAL MUNICIPAL ACT 1884 s 337
[I L R., 20 Calc., 654]

— to accommodate pilgrims

See N W P AND OUDH LODGING HOUSE ACT
[I L R., 20 All., 534]

— to keep animals

See CALCUTTA MUNICIPAL CONSOLIDATION ACT s 307
[I L R., 25 Calc., 625]

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— to practise as a pleader, Withdrawal of—

See RECORDED ACT s 17
[8 B L R., 180]

— to quarry

See CONTRACT—CONSTRUCTION OF CONTRACTS
[I L R., 13 Bom., 630]

— to sell liquor

See BENGAL EXCISE ACT XXI OF 1850
[8 W R., Cr., 4
18 W R., Cr., 60
19 W R., Cr., 34
25 W R., Cr., 42]

See EXCISE ACT

[I L R., 1 All., 630 635, 638]

See MANDAMUS

11 B L R., 250

to sell opium

See OPIUM ACT
[I L R., 13 Mad., 191
I L R., 28 Calc., 571]

— to use land of another

See USER RIGHT OF
[I L R., 16 Calc., 640]

1 — Document giving permission to capture elephants—*Easements Act* (I of 1882) ss 52 56 *Easement*—The owner of a forest in 1883 executed an instrument whereby he gave to the other party license permission to trap fifty elephants in the forest and stipulated for a certain payment in respect of each elephant which was captured. In 1884 without the knowledge of the owner of the forest the other party by a similar instrument gave permission to the defendant to trap ten elephants. The instrument of 1883 was expressed to be in force for six years that of 1884 for five years. The latter instrument was not ratified by the owner of the forest who in 1885 granted the exclusive right of trapping elephants to the plaintiff. The plaintiff now sues the defendant for possession of two elephants which had been captured by him. *Held* that the instrument of 1883 was a license merely and that since the owner of the forest had never consented to or ratified the instrument of 1884 the plaintiff was entitled to a decree. *RAMAKRISHNA & UNNICHECK*
[I L R., 16 Mad., 280]

2 — Right of growing rice plants in another's land to be afterwards transplanted to his own—*Easements Act* (I of 1882) ss 4 and 52 A license as defined by s 52 of the Indian Easements Act (I of 1882) is not as in the case of an easement connected with the ownership of any land but creates only a personal right or obligation. License rights are not generally transferable, and the transferee is not bound to continue the license granted by the former owner while easements once established follow the property. The plaintiff claimed and proved a prescriptive right of using a certain land

LIEN—continued.

not pass to the purchasers, though the Bank purported to have brought the whole sixteen annas in the properties to sale. *R* then brought this suit for the recovery of possession of the six-annas share of the properties purchased at the sale by the Bank themselves, and which were now in their possession. *Held* that, the share of *S* not having been sold, the lien imposed upon it by the mortgage-deed remained intact and continued in the hands of the Bank. *Held* also that, under the covenant in the mortgage-deed above referred to, the Bank were entitled to remain in possession as mortgagees until the proportion of the debt, which might legitimately be imposed upon the six-annas share of the properties in their hands, was paid. **LUTCHMEE SINGH BANADER v. LAND MORTGAGE BANK OF INDIA**

[I. L. R., 14 Calc., 464]

14. ——— *Joint Stock Company—“Secretaries and treasurers”—Advances and disbursements to, and on behalf of, the company—Lien on company's property—Contract Act (IX of 1872), ss. 171, 217, 221—Principal and agent.* *E. L. & Co.* were the secretaries and treasurers of the *R S M Company*, which went into liquidation. *E. L. & Co.* claimed to be creditors of the company for **Rs. 12,000** in respect of advances made to, and expenses incurred and disbursements made on behalf of, the company from time to time and in the conduct of its business. Rupees one lakh of this amount was in respect of sums lent to the company and guaranteed by the claimants. The remainder consisted of money expended in the working of the company's business. *E. L. & Co.* claimed to be in possession generally of all the property of the company, and to be entitled to a lien on such property in respect of the above claim of **Rs. 12,000**. Other creditors disputed the possession and the right to the lien claimed. *Held* that, even assuming *E. L. & Co.* to be in possession of the property of the company as alleged, they had not the lien that they claimed. A lien is either general or particular. The claimants had not a general lien, because they were neither “bankers, factors, wharfingers, attorneys, or policy-brokers,” to whom a general lien is limited by s. 171 of the Contract Act. Nor had they any particular lien, nor under s. 217 of the Contract Act, because that section was inapplicable, having to do only with a lien on a sum of money of the principal in the hands of the agent; nor under s. 221 of the Contract Act, because the sums advanced and expended were not, as required by that section, “disbursements and services in respect of” the property on which the lien was claimed, but were loans made on behalf of the company generally and for the purposes of the whole concern. **IN RE BOMBAY SAW MILLS COMPANY. EWART LATHAM & Co.'S CLAIM**

[I. L. R., 13 Bom., 314]

15. ——— *Receipt of money in execution of decree—Repayment to judgment-debtor on reversal of decree by High Court—Subsequent reversal by Privy Council.*—A decision of the Principal Sudder Ameen, which declared the decree-holders entitled to satisfy their decree by the sale of certain hypothecated properties, having been reversed

LIEN—continued.

by the High Court, an appeal was preferred to the Privy Council, which reversed the decree of the High Court and affirmed the original decision, and provided for the payment of costs. *Held* that the lien established by the Privy Council decree was not lost to the decree-holders by their previous conduct in receiving a portion of the decretal money by the sale of part of the mortgaged premises, which money was subsequently returned by them to the judgment-debtor, on the decision of the Principal Sudder Ameen having been reversed by the High Court. **LALLA ROODER PERSHAD v. HUN PERSHAD DOSS**, 23 W. R., 194

16. ——— *Lien on indigo factory—Act X of 1859, ss. 110, 111—Sale in execution of decree.*—A 10-annas shareholder (*C*) in a factory, who was also manager of the whole, executed a kabuliati stipulating that as long as he was the mukhtear the lessee (plaintiff) was at liberty, in the event of the rent not being paid punctually, to take khas possession, or to lease the property to other parties; and that in case of another mukhtear being appointed, or the property being sold, the factory as well as the mukhtear or purchaser would be responsible for any arrears accruing before or after. *C* then mortgaged the factory to *L*, who subsequently obtained a decree entitling him to satisfy his mortgage by the sale of the factory. Plaintiff sued *C* and *L* to obtain a declaratory decree to the effect that the factory could be sold in satisfaction of his decree for rent under Act X of 1859, free of incumbrances created by the bonds. *Held* that, as no money was advanced for the lease, and no debt was due from the lessee to lessor, plaintiff had no lien on the factory in satisfaction of a debt. *Held* that plaintiff could have proceeded under s. 110, Act X, and then under s. 111, if *L* objected to the sale of the factory; but having no prior lien upon the factory, he had no cause of action as against *L*. **CHUMUN LALL CROWDHRY v. RUGHOO NUNDUN SINGH**

[I. L. R., 11 W. R., 194]

17. ——— *Lien on attached property.*—The fact of *A* obtaining a declaration of his lien upon certain property for an amount of debt is no bar to *B*'s attaching and selling that property, but the purchaser will be bound by that lien. **MONOHAR PAL v. WISE**

[15 W. R., 246]

18. ——— *Right of lien—Pleading—Setting up adverse title.*—In order that a defendant may set up his right of lien as a defence, he must be prepared to show that when the suit was brought he was ready to give up the property over which he claimed the lien, on being paid the amount due to him, and therefore he cannot plead his right of lien when he denies and contests the plaintiff's title to the property. **JUGGERNAUTH DOSS v. BRIJNAUTH DOSS**

[I. L. R., 4 Calc., 322; 3 C. L. R., 375]

19. ——— *Lien for advances made to*

—*Acquiescence.*—*M*, the manager of an indigo concern, under s. 243, Act VIII of 1859, by a deed dated the 1st February 1873, in which the owners of the concern joined, which was duly registered, and which was made with the Court's sanction, mortgaged the

LIEN—continued

securities notwithstanding the revocation of the power-of attorney, the act of the defendant in trying to prevent such exercise of power by revoking the power-of attorney, being unjustifiable, and that therefore the plaintiffs were entitled to have the power declared valid and subsisting and generally to have the relief they asked for. **STEWART v DELHI AND LONDON BANK** 17 W. R., 201

5. *Lien of letter of boats on goods placed in the boat*—The mere letter of boats for hire has not a lien for his hire upon

8. *Wharfinger's lien—Contract Act (IX of 1872), ss 170, 171*—Where a person does work under an entire contract with reference to goods delivered at different times such as to establish a lien, he is entitled to that lien on all goods dealt with under that contract. **CHASE v WESTMORE, 5 M & S, 180**

7. *Charge created by tenant, Duration of*—A charge on premises created by a tenant can only be a valid charge so long as his right and interest in the property continues. It must cease with the cessation of such right and interest. **ZALIM SINGH v BISHNEER LADY** [7 N. W., 161]

8. *Tortious or rece-*

9. *Lien on exchanged property*—Where A mortgaged to B certain property by deed of conditional sale, and afterwards at a partition received other land in lieu of what was

10. *Agreement not to alienate—Suit to set aside patta lease*—P, as mortgagor, sued the Ds for possession after foreclosure. A razzamah and safnamah were put in and

LIEN—continued.

a decree passed thereon under which the Ds and their

shares of the principals being sold first. After this the co-sharers granted a patta of a portion of the estate to the defendants in this suit. Subsequently the rights of the Ds were sold in execution to B, who again sold them to plaintiffs, who had previously acquired twelve annas of the right and interest of B, under the razzamah and safnamah and decree, the remaining four annas having passed to C, now represented by defendant K. The present suit was

their claim was satisfied. **DUTTERISHTO SINGH v ERSKINE & CO** 16 W. R., 54

11. *Lien on land—Payment by mortgagee on account of revenue assessed on land mortgaged as lakhrai*—An usufructuary mortgage, to whom was pledged, as lakhrai land which was not valid lakhrai, and which was subsequently assessed with revenue, is entitled to a lien against the mortgagee for sums of money paid by the former in discharge of the revenue. **ARJUN SINGH v MOOJHEERODDIN** 3 W. R., 6

12. *Money-debt—Lien on property of judgment-debtor*—The holder of a simple money-debt does not acquire a lien on the property of his judgment-debtor. **MOYONER DASS v KALLY DATTA DUTTA** 8 W. R., 116

13. *Mortgage—Coreman's that mortgagee is entitled to enter suit, Right of—Mortgagee's right in English form*—He executed a mortgage in English form in favour of the L. Bank, and the mortgagee and mortgagor one provision that if default the mortgagee could take possession of the property of the mortgagor, and a daughter, and a son, the heirs. According to Mahomedan law, he was entitled to a sixteenth share of the mortgage property. On the 9th of May 1872, after the mortgage money became due, the L. Bank brought a suit, and on the 13th of July 1872 obtained a decree for possession. The existence of the right of B to a share in the property was not known to the Bank, and she was not made a party to that suit. The Bank, in execution of their decree, caused the mortgaged property to be sold and themselves purchased some of the proceeds. The mortgagee did not satisfy the entire debt. On the 1st of December 1872, B sold her share of a share in the property to P. In a suit by B against the purchaser of one of the mortgaged properties at the auction sale it was held that the share of B in the estate of B & C

See **LUCKEY v WATZ & GINRAJ JHA** [4 W. R., 45]

13. *Mortgage—Coreman's that mortgagee is entitled to enter suit, Right of—Mortgagee's right in English form*—He executed a mortgage in English form in favour of the L. Bank, and the mortgagee and mortgagor one provision that if default the mortgagee could take possession of the property of the mortgagor, and a daughter, and a son, the heirs. According to Mahomedan law, he was entitled to a sixteenth share of the mortgage property. On the 9th of May 1872, after the mortgage money became due, the L. Bank brought a suit, and on the 13th of July 1872 obtained a decree for possession. The existence of the right of B to a share in the property was not known to the Bank, and she was not made a party to that suit. The Bank, in execution of their decree, caused the mortgaged property to be sold and themselves purchased some of the proceeds. The mortgagee did not satisfy the entire debt. On the 1st of December 1872, B sold her share of a share in the property to P. In a suit by B against the purchaser of one of the mortgaged properties at the auction sale it was held that the share of B in the estate of B & C

LIEN—concluded.

any custom to that effect. If the banian claims a lien, he must prove its existence either by showing some express agreement giving him the lien or by showing some course of dealing from which it is to be implied. On the other hand, where merchandize consigned has been sold in good faith, and in accordance with the purpose for which the consignment was made, and the proceeds have been brought into account between the consignee and the banian, the latter is not liable to account to the consignor. The principal of the agent cannot disturb the account with the consignee except on the ground of bad faith. A banian setting up a written agreement, nor asserting that he had advanced to the firm on the security of specific quantities, claimed a lien as against the consignee on merchandize consigned to the firm, whether arrived or in transit. The lien alleged was for the general balance of account, in virtue of an agreement extending to the whole of the merchandize consigned, whatever might have been the terms of the consignment between the consignor and consignee. The banian had made advances, but for them the consideration was the profit to be made by sales. There was no pledge nor any agreement, express or implied, giving the banian a lien on the goods consigned. It was therefore unnecessary to determine whether the banian had notice of the terms of the consignment, nor was it necessary to consider the effect of s. 178 of the Contract Act (IX of 1872), there having been no pawn. The banian having no lien against the consignee had none against the consignor, and could not question the right of the latter to stop in transitu. *PEACOCK v. BAJNATH, GRAHAM v. BAJNATH*. I. L. R., 18 Calc., 573 [L. R., 18 L. A., 78]

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See CASES UNDER HINDU LAW—WILL—CONSTRUCTION OF WILLS—ESTATES ABSOLUTE OR LIMITED.

See LIMITATION ACT, ART. 141.
[I. L. R., 20 Mad., 459]

See WILL—CONSTRUCTION.
[I. L. R., 21 Calc., 488
I. L. R., 23 Bom., 1, 80
I. L. R., 19 Bom., 221, 770]

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See CASES UNDER PRESCRIPTION—EASEMENT—LIGHT AND AIR.

Obstruction to—

See CASES UNDER INJUNCTION—SPECIAL CASES—OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY.

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Obligation of vessels to carry—

See SHIPPING LAW—COLLISION.
[6 Bom., O. C., 98]

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| 3. STATUTES OF LIMITATION | 4728 |
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| (b) STATUTE 21 JAC. I, c. 16 | 4729 |
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| (d) BENGAL REGULATION III OF 1793, s. 14 | 4730 |
| (e) BENGAL REGULATION VII OF 1799, s. 18 | 4732 |
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See CASES UNDER BENGAL TENANCY ACT, SCH. III.

See CASES UNDER BOND.

See CASES UNDER CIVIL PROCEDURE CODE, 1877, ss. 257, 258.

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWERS OF COURT.

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| [I. L. R., 18 Calc., 482, 515 |
| I. L. R., 15 Bom., 370 |
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| I. L. R., 17 Mad., 67, 76 |
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| I. L. R., 17 All., 106 |
| L. R., 22 L. A., 44 |
| I. L. R., 23 Calc., 39 |

See EXECUTION OF DECREE—DECREE TO BE EXECUTED AFTER APPEAL OR REVIEW I. L. R., 18 Bom., 203, 542

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| [I. L. R., 23 Calc., 876 |
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See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION, ETC.

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| [B. L. R., Sup. Vol., 970 |
| 13 B. L. R., Ap., 27, 30 |
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| 7 N. W., 115 |
| 7 W. R., 19 |
| I. L. R., 15 Bom., 28 |
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See CASES UNDER LIMITATION ACT, XV OF 1877.

See CASES UNDER ONUS OF PROOF—LIMITATION AND ADVERSE POSSESSION.

See CASES UNDER POSSESSION—ADVERSE POSSESSION.

LIEN—continued

concern and pledged and assigned the season's crop to *A* and *B* who were parading to secure re payment of a large sum of money consisting partly of the balance of previous loans from the husband of *A* and *B* and partly of a new loan to the extent of

LIEN—continued,

expended A mere volunteer can in general claim no such lien Held on the facts per GARTH C J

expended A mere volunteer can in general claim no such lien Held on the facts per GARTH C J

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I. L. R., 2 Calc., 58

20 ——— Lien on tea garden—Priority of lien—Agreement by purchaser of moiety to pay working expenses to be charge on estate—Valuation to purchaser of moiety for whole estate—Where

price at which the firm should secure the whole property ———

having died in the interval and the firm having been allowed to recover no part on of the advances which it had made for the working of the estate after his decease it could not be required to pay again for the improvement in value of the estate which had resulted from its own advances Broughton v Spink

[25 W. R., 243]

LIMITATION—continued.**2. QUESTION OF LIMITATION—continued.**

complaining that no adjudication had been given on the plea of limitation. *Held* that the power of a Court to deal with written statements which appear to contain irrelevant matter, or to be argumentative or unnecessarily prolix, is regulated by s. 124, Act VIII of 1879; and that, as the plea of limitation must be assumed to have been properly before the Judge, he was bound to adjudicate upon it. **BOULE SINGH v. HULOHANS NARAIN SINGH**

[7 W. R., 212]

12. — Question raised on appeal.—*Revised Power of Appellate Courts.*—Where in the lower Court an issue was raised whether the plaintiff's claim was barred by limitation, and the Judge decided it was not, and decreed the case on the merits; and the decree was appealed against by the plaintiff; and the Appellate Court did not deal with the question of limitation, but remanded the case for a new trial on the merits.—*Held* that, on appeal from the new decree, the Appellate Court could entertain the question of limitation; and that the lower Court might have re-tried that issue on the facts found on the new trial. **PHOOL COOMAREE BEEFE v. OONKEE PRESHAD ROISTOREE**

[2 Ind. Jur., N. S., 50]

S. C. PHOOL COOMAREE BEEFE v. WOONKEE PERSHAD RESIDORE 7 W. R., 67

NILJAREE v. MUJEEDULLAH 19 W. R., 209

13. — Question not raised in lower Appellate Court.—A plea of limitation overruled in the Court of first instance, and not brought before the lower Appellate Court, cannot be entertained by the High Court in special appeal. **KASHEE CHUNDER TURKOBHOSSEN v. KALLY PROBUNNO CHOWDHRY** 9 W. R., 452

14. — Limitation depending on facts.—Where a plea of limitation can only be properly decided with reference to facts found in connection with the question of possession and dispossession, and where appellants have omitted to press evidence on the point, though they had every opportunity before the lower Appellate Court, it cannot be admitted to be taken in special appeal. **RAMDHONE DASS v. RAM RUTUN DUTT**

[10 W. R., 425]

15. — Point for which evidence is necessary.—Where the Statute of Limitations was not pleaded in the original Court.—*Held* that it might be set up in the Appellate Court if evidence could be taken there in reply to such plea. On special appeal the Statute of Limitations cannot for the first time be pleaded, unless where the facts which raise the plea are admitted. **NARASU REDDI v. KRISHNA PADAYACHEE** 1 Mad., 358

Nor in review. **SARASYATI v. PACHANNA SEITI**
[3 Mad., 258]

See, however, **RAMANATHA MUDALI v. VAITHALINGA MUDALI** 2 Mad., 238

LIMITATION—continued.**2. QUESTION OF LIMITATION—continued.**

where it was held that the principle of the decision in **Narain Reddi v. Krishna Padayachee**, 1 Mad., 358, should not be extended.

It is now expressly laid down by s. 4 of the Limitation Act, 1877, that the question of limitation must be taken into consideration whether raised as a defence or not.

16. — Question not taken in pleadings or grounds of appeal.—*Consideration of question on appeal.*—A question of limitation, when it arises upon the facts before a Court, must be heard and determined, whether or not it is directly raised in the pleadings or in the grounds of appeal. The fact that a subordinate Court has decided that the suit or appeal before it was brought within time, or that there was sufficient cause, within the meaning of s. 5 of the Limitation Act, for the appellant in that Court not presenting the appeal within the period of limitation prescribed, does not preclude the High Court from considering that decision in appeal. **BECHI v. AHANULLAH KHAN**

[I. L. R., 12 All., 461]

17. — Waiver of plea of limitation.—*Raising plea again on appeal to High Court after abandonment throughout case.*—**Madras Boundary Marks Act (XXVIII of 1860), s. 25—Madras Boundary Marks Act Amendment Act (Mad. Act II of 1884), s. 9—Suit to set aside decision of the Survey officer.—A suit filed on the 21st April 1891 to set aside the decision of the Settlement officer under the Madras Boundary Acts, passed on the 15th September 1890, was dismissed by the Munsif as being time-barred, not having been brought within six months as provided by s. 25 of Act XXVIII of 1860. This decision was reversed by the District Judge, who remanded the suit for disposal on the merits, holding that the production by the plaintiff of a copy of the judgment, dated the 25th October 1890, raised a presumption that the suit was in time, and shifted the burden of proof to the defendant to show that an earlier copy was granted to plaintiff, or that the decision was pronounced in the plaintiff's presence. Against this remand order there was no appeal. At the re-hearing, the question of limitation was not again raised, and the Munsif gave a decree on the merits. An appeal was preferred to the District Court, but no mention was made of the question of limitation. On appeal to the High Court.—*Held* that the question of limitation had been put aside by the consent of the parties who desired to have the case decided on the merits, and that the appellant could not be allowed to fall back on this plea of limitation which he had abandoned in the lower Courts. **RANGAYYA APPA RAU v. NARASIMHA APPA RAU** I. L. R., 19 Mad., 416**

18. — Power of Appellate Court.—*Appeal on portion of case.*—*Limitation Act, 1877, s. 4.*—Where a suit, which ought to have been dismissed under s. 4 of the Limitation Act, although limitation was not set up as a defence, is not dismissed, the defendant, in order that the

LIMITATION—continued.**See POSSESSION—NATURE OF POSSESSION**

- [1 L. R., 4 Calc., 216, 870
 2 B. L. R., Ap., 29
 7 B. L. R., Ap., 20
 1 L. R., 5 Calc., 584
 6 C. L. R., 539
 4 C. W. N., 287
 11 C. L. R., 305
 24 W. R., 33, 418]

See CASES UNDER SALE IN EXECUTION OF DECREES—INVALID SALES—DECREES BARRED BY LIMITATION**See CASES UNDER TITLE—EVIDENCE AND PROOF OF TITLE—LONG POSSESSION****See WAGING WAR AGAINST THE QUEEN**

[7 B. L. R., 63]

See WASTE

4 B. L. R., O. C., 1
 [7 B. L. R., 131]

1 LAW OF LIMITATION

1. ———— **Nature of law—Prescription**
—Lex fori—The law of prescription or limitation is a law relating to procedure having reference only to the *lex fori*. Where a Court entertains a cause of

RUCKMABOYE v. LALLODHOY MOTTICHUND

[5 Moore's I. A., 234]

2. ———— **Operation of law—Cause of action**—The Statute of Limitations never begins to run until there has been a cause of action. **KHU BUCKDHAREN SINGH v. RESWUT LALL SINGH**

[12 W. R., 168]

3. ———— **Application to enter up judgment on warrant of attorney**—The Statute of Limitations is no answer to a rule nisi to enter up judgment on a warrant of attorney. **SOOJAN MULL v. HYDER SINGH**

[1 Ind. Jur., O. S., 58]

4. ———— **Agreement of parties**—Held that the operation of the Law of Limitation cannot be prevented by any act of the parties or arbitrators unless as provided by law, and a suit beyond time cannot be entertained by the Courts merely because the person entitled to assert the right was by some arrangement or negotiation prevented from asserting it within the statutable period. **JEHANDAR KHAN v. MUNNOO**

[1 Agra, 248]

DAVIS v. ABDOL HAMED

[8 W. R., 55]

5. ———— **Rule of Court**—Nor can its operation be prevented by a rule of Court. **KAMBINATANI JAYAJI SURRA I AJALU NAYANI VARU v. UDDIGHIRI VENKATARAYA CHETTY**

[2 Mad., 268]

6. ———— **Right of Government to defence of—Suits against Government by creditors of ex King of Delhi**—The Government of India, taking upon themselves to pay debts due against the

LIMITATION—continued**1 LAW OF LIMITATION—concluded**

estate of the ex king of Delhi out of the assets of

might have attended legal proceedings against the king during his sovereignty. **NARAIN DOSS v. 1 STATE OF THE EX KING OF DELHI**

[10 W. R., P. C., 55]

8. C. LALLA NARAIN DOSS v. ESTATE OF EX KING OF DELHI

[11 Moore's I. A., 277]

2 QUESTION OF LIMITATION

8. ———— **Right of Appellate Court to go into facts on question of limitation**—There is no law which prevents a lower Appellate Court from looking into all the facts of a case before coming to a conclusion on the point of limitation. **KEDARNATH GHOSH v. KASIM MUNDUL**

[8 W. R., 364]

9. ———— **Extension of period of limitation—Beng. Reg. II of 1900 s. 3 cl. 2 Question of limitation—Plaint**—Cl. 2 s. 3 Bengal Regulation II of 1905 required the plaintiff in his plaint or replication to set forth distinctly the ground on

RAMKANAYE DOSS v. KISHEN CHUNDER ROY

[Marsh., 22 1 Hay, 55]

10. ———— **Question not raised by parties—Pleading—Small Cause Court Rule 19—Per FRACOCK, J., and NORMAN, J.**—It is competent for a Judge of the Court of Small Causes,

LIMITATION—continued.**2. QUESTION OF LIMITATION—continued.**

issue as to the particular provision on the subject of minority found in s. 11, Act XIV of 1859, plaintiffs were entitled to be heard on the issue of general limitation under cl. 12, s. 1, and to give evidence to show that the suit was not barred. *BAHUR ALI v. SOOKTA BIBEE* . . . 13 W. R., 63

26. ———— *Appeal from order overruling plea of limitation—Interlocutory order.*—The order of a Judge overruling the defence of limitation, and remanding the suit for trial on the merits, if not immediately appealed against as a decree, may, as an interlocutory order, be objected to when the ultimate decision is appealed against. *WUZBERUN BEEBEE v. WARRIS ALI* . . . 1 W. R., 51

VITHAL VISHVANATH PRADHU v. RAMOHANDRA SADASHIV KIRKIRE . . . 7 Bom., A. C., 149

But see *BEEKUN KOER v. MAHARAJAH BAHADOOR* [Marsh., 66: 1 Hay, 134

27. ———— *Decision on plea by implication.*—It is not necessary that the Court below should expressly overrule a plea of limitation; it is sufficient if the Court disposes of the question of limitation by implication. *WISE v. ROMANATH SEN LUSKHUR* . . . 2 Ind. Jur., O. S., 5

28. ———— *Right to raise plea—Landlord and tenant—Suit for possession—Trespasser.*—In a suit to recover possession, the defendant, by admitting the right of the plaintiff as the owner of the land in dispute, and acknowledging himself to be the plaintiff's tenant, precludes himself from pleading adverse possession or limitation, in whatever form it may be that the plaintiff asserts his right to the land,—i.e., whether he sues the defendant as a tenant or trespasser. *WATSON & Co. v. SHURUT SOONDREE DEBIA* . . . 7 W. R., 395

29. ———— *Landlord and tenant—False plea of tenancy—Trespasser.*—The plea of limitation can be raised and determined in a suit brought by a landlord against a person who is really a trespasser, but who has set up a false case of tenancy. *DINOMONEY DABEA v. DOORGAPERSAD MOZOOMDAR* [12 B. L. R., F. B., 274: 21 W. R., 70

30. ———— *Landlord and tenant—Adverse possession.*—Where the plaintiff sued for khas possession of land, it was held the defendants, tenants of the plaintiff, could raise the plea of limitation, on the ground that they had held possession of the land as bi-howladars for more than twelve years previous to the suit. *RUTTONMONEE DABER v. KOMOLAKANTH MOOKERJEE* [12 B. L. R., 283 note: 12 W. R., 364

31. ———— *Landlord and tenant—Knowledge of adverse title.*—Limitation can be pleaded in a suit by a landlord against a tenant, but where the defendant claimed to hold on a mokurari tenure, to make the possession adverse, it must be shown that the plaintiff knew of the title set up by the defendant. *TEKAITNE GOWBA KUMARI v. BENGAL COAL COMPANY* [12 B. L. R., 282 note: 13 W. R., 129

LIMITATION—continued.**2. QUESTION OF LIMITATION—concluded.**

Affirmed by Privy Council . . . 19 W. R., 252

32. ———— *Landlord and tenant—Failure to prove talukhdari right.*—Raiyats failing to establish a talukhdari right set up by them are not in a position to plead adverse possession as against their landlord's right to recover rent. *LAKOO KHAN v. WISE* . . . 18 W. R., 443

33. ———— *Landlord and tenant—Defendant pleading tenancy and adverse possession.*—A defendant has a right to set up the plea of tenancy and at the same time to rely on the Statute of Limitations. *DINOMONEY DABEA v. DOORGAPERSAD MOZOOMDAR*, 12 B. L. R., 274, followed. *TEKAITNE GOWBA KUMARI v. BENGAL COAL COMPANY*, 12 B. L. R., 282 note, distinguished. *MAIDIN SAIBA v. NAGAPA* . . . I. L. R., 7 Bom., 96

34. ———— *Landlord and tenant.*—*Semble*—A sub-lessee without title cannot plead limitation against his landlord either by himself or through his lessor. *MAHABAM SHEIKH v. NAKOWRI DAS MAHALDAR* . . . 7 B. L. R., Ap., 17
S. C. MOHURUM SHAIKH v. NOWKURREE DASS MOHULDAR . . . 14 W. R., 357

But see *NAZIMUDDIN HOSSEIN v. LLOYD* [6 B. L. R., Ap., 130: 15 W. R., 232

3. STATUTES OF LIMITATION.**(a) GENERALLY.**

35. ———— *Construction of Limitation Act.*—Statutes of Limitation are, in their nature, strict and inflexible enactments, and ought to receive such a construction as the language in its plain meaning imports. *LUCHMEE BUKSH ROY v. RUNJET RAM PANDAY* [13 B. L. R., P. C., 177: 20 W. R., 375

S. C. in lower Court . . . 12 W. R., 443

36. ———— *An Act of Limitation being restrictive of the ordinary right to take legal proceedings must, where its language is ambiguous, be construed strictly,—i.e., in favour of the right to proceed.* *UMIASHANKAR LAKHMIRAM v. CHHOTALAL VAJEBAM* . . . I. L. R., 1 Bom., 19

37. ———— *The applicability of the particular sections of Act XIV of 1859 must be determined by the nature of the thing sued for, and not by the status, race, character, or religion of the parties to the suit.* *FUTTEHSANGJI JASWANTSANGJI v. DESAI KULHIANRAJI HAKOOMUTRAJJI* [13 B. L. R., 254: 21 W. R., 178
I. L. R., 1 I. A., 34

38. ———— *Limits to enforcing rights.*—A Limitation Act is not intended to define or create causes of action, but simply to prescribe the periods within which existing rights may be enforced. *JIVI v. RAMJI* . . . I. L. R., 3 Bom., 207

39. ———— *Retrospective effect.*—The general rule as laid down in *Reg. v. Dorabji*, 11 Bom., 117,—that "an Act of limitation,

LIMITATION—continued**2 QUESTION OF LIMITATION—continued**

question of limitation may be dealt with by the Appellate Court must appeal on the whole case
Almunissa Khatoon v Hossein Ali
 [3 C L R, 287]

19. ————— *Cross appeal—*

was disallowed The decree holder appealed from the order
 appeal
 for execution
 execution

Held that under the circumstances of the case the Appellate Court was not competent to take the question of limitation into consideration *Almunissa Khatoon v Hossein Ali*, 5 C L R 267, followed *Ruhan Nath Singh Manku v Pareshram Ma NATA* 1 L R, 9 Calc., 635-13 C L R, 89

20. ————— *Omission to decide question—*The Judge in appeal is bound to

21. ————— *Question in reference for accounts to be taken—Wasser*—In a suit for an account, where the defendant while alleging the balance to be in her favour, contended that the plaintiff's claim was barred by the Limitation Act and the

having raised the defence of limitation and not having subsequently abandoned it that question should be first decided *Pirbhai Davji v Navehai*
 [3 Bom. O C, 164]

22. ————— *Question raised after remand on special appeal—Law under the Limitation Act, 1859*—A defence of limitation under Act XIV of 1859 could not be raised for the first time after there had been a remand on special appeal from the decree of the Court which has heard the cause on remand. *Buzl Ruheem v Sreenath Bose*, 6 W R, 178 followed *Kuria v Gururao* 9 Inding 1 East, 283, distinguishing *J*, doubting *lata v Beru* 4 Bom, 197, A C, the Court ought not, even upon a special appeal in a case in which

LIMITATION—continued**2 QUESTION OF LIMITATION—continued.**

there has not been any remand so to raise such question *Moru Bin Patelaji v Gopal Bin Satu*
 [1 L R, 2 Bom, 120]

23. ————— *Point of limitation taken for the first time in second appeal—Omission of Court of first instance to reject a plaint for limitation, Effect of—*The plaintiff's suit to recover certain lands was dismissed by the Court of first instance and by the lower Appellate Court, but on second appeal was remanded for determination of plaintiff's alleged right of perpetual cultivation of the land On remand the District Judge gave a decision in favour of the plaintiff The defendant appealed to the High Court, and then for the first time raised the point of limitation *Held* that the

and as he took no steps to this end he should be

each successive Court whenever the objection comes to view, and ought not to be assumed by inference
Dattu v Kasai 1 L R, 6 Bom., 535

24. ————— *Question in execution of decree—Jurisdiction of Court where decree was passed—Transfer of decree for execution—Code of Civil Procedure, ss 223 239, 248*—On the 4th of March 1884 a decree holder applied to the Court of the Subordinate Judge of Moorshedabad (where the decree was passed) for transfer of the decree to the District Court of Beerbhoom for execution The transfer was made, and on application by the decree-holder, the judgment debtor's properties in Beerbhoom were attached Thereupon the judgment-debtor, objected to the attachment, and obtained an order under s 239 of the Code of Civil Procedure, staying the execution proceedings The judgment debtor then applied to the Court of the Subordinate Judge at Moorshedabad for a writ of certiorari to quash the order of transfer

[1 L R, 13 Calc., 257]

25. ————— *Special and general question of limitation—Minority*—Where the issue of limitation raised in the first Court was a special

LIMITATION—continued.

3. STATUTES OF LIMITATION—continued.

44. ————— *Deduction of time—Non-suit—Computation of limitation.*—According to the former procedure, when a suit before a competent tribunal ended in a non-suit, the period of limitation was computed from the accruing of the original cause of action, the time while the first suit was pending being deducted. **PURNHOO NARAIN SINGH v. LEEA-NUND SINGH** 2 W. R., 256

45. ————— *Deduction of time—Suit by minor after attaining majority—Non-allowance of pendency of suit by guardian.*—In a suit by a minor after attaining majority, no allowance can be made, under Regulation III of 1793, for the period of pendency of a suit brought by his guardian and eventually non-suited. **LICHMUN PERNHAN v. JVO-GERNATH DOSS** W. R., 1864, 2

46. ————— *Deduction of time—Suit in Collector's Court—Reference to civil suit.*—A suit for proprietary right in certain rent-free land in respect of which the plaintiff had instituted a suit for rent before the Collector, which was dismissed, and the plaintiff referred to a civil suit.—*Held* that the plaintiff was not entitled to any deduction of the time during which the rent suit was proceeding, and that the date of accrual of plaintiff's right, and not that of the Collector's order of reference, was the cause of action in this case, and that the plaintiff's suit was barred by limitation, under s. 14, Regulation III of 1793. **HOSAIN KHAN v. DINNORUNDHOO PUNDAH** 1 W. R., 35

OKHETOONISEA v. KOOCHIL SIRDAR

[2 W. R., 45]

47. ————— *Deduction of time—Suit for excess of jama—Suit first brought in summary department.*—The time occupied in the summary department in recovering excess of jama according to a decree should be deducted from the period of limitation for the regular suit which is afterwards brought for the same purpose, and to which the plaintiff was referred by the Court. **HUTOMONER GOORTIA v. GOBIND COOMAR CHOWDHURY**

[5 W. R., 51]

48. ————— *Deduction of time—Disputed title—Sufficient cause—Substitution of parties.*—The plaintiffs as heirs of *R*, the husband of one *B*, more than twelve years after her death sued to recover lands alienated by her. As an answer to the plea of limitation, they alleged that, in a suit for other property brought against *B* in her lifetime, they presented a petition after her death praying to be allowed to appear as her representatives, and were opposed by one *L* claiming to be an adopted son of *R*; that in March 1847, and within twelve years before suit, the Principal Sudder Ameen ordered the plaintiff's names to be substituted for that of *B* as defendants in that suit. *Held* by the majority of the Court (*dissentiente GLOVER, J.*) that these proceedings did not bar the operation of the old Law of Limitation (s. 14, Regulation III of 1793). **RANGOPAL ROY v. CHUNDER COOMAR MUKDUL**. 2 W. R., 65

LIMITATION—continued.

3. STATUTES OF LIMITATION—continued.

49. ————— *Deduction of time.*—A party who had been endeavouring by resort to competent Courts to recover his rights was held to be entitled to avail himself of the exception in Regulation III of 1793, s. 14, though part of the proceedings was erroneous in enforcing an order made by a single Judge of the Sudder Court, which was ineffectual by reason of its not being confirmed by a second Judge. **DOORGAPERSAID ROY CHOWDHURY v. TARATERSAUD ROY CHOWDHURY**

[4 W. R., P. C., 63; 8 Moore's I. A., 308]

50. ————— *Deduction of time—Beng. Reg. II of 1805, s. 3—Adverse possession—Suit by heir for share of inheritance.*—*A* died in 1813. At *A*'s death one of his heirs entitled to a share in the succession of his estate obtained possession, claiming the entirety under a deed of gift. Another heir also claimed the entirety, first under a will, and in the alternative as customary heir. Suits were brought by the two claimants, in the course of which questions were raised as to who would be entitled in case both claimants should fail, but from the frame of the suits it was impracticable to deal with these questions till the adverse claims to the entirety were disposed of. Ultimately, in 1842, those claims were disposed of by the Judicial Committee of the Privy Council in one of the suits by a decision which in substance negatived the claims of both parties to the entirety, and decreed that the heirs of *A*, according to the Shiah law of inheritance, were entitled, and directed the mesne profits to be brought into Court and divided among such heirs. A suit was in consequence instituted in 1852 by one of the heirs of *A* to carry into execution the decree of the Privy Council made in 1842. *Held* that, although the claim which accrued so long ago as the death of *A* would have been in ordinary circumstances barred by the Bengal Regulations III of 1793, s. 14, and II of 1805, s. 3, yet that, as the pendency of the appeal rendered it impracticable to bring the suit until the question was disposed of by the decree of the Privy Council in 1842, the suit must be considered as supplemental to that decree, and as it was brought within twelve years from that date, it was not barred by these Regulations. *Held* also that, although one of the original claimants had obtained possession under an order of the Court, and retained the same until the final decree in 1842, it was not such a quiet and undisturbed possession, under the circumstances, as to operate by Regulation II of 1805, s. 3, as a bar to the suit. **ENAYET HOSSEIN v. AHMED REZA**

[7 Moore's I. A., 238]

(c) **BENGAL REGULATION VII of 1799, s. 18.**

51. ————— *Ineffectual execution proceedings in summary suit—Beng. Reg. VIII of 1819, s. 18—Cause of action.*—In a summary suit under Regulation VII of 1799, the plaintiff obtained a decree against his gomastah for certain moneys due from the latter, but failed in execution to recover the amount. He accordingly brought a regular suit under cl. 4, s. 18, Regulation VIII of 1819, in order to make the immoveable property of his gomastah

LIMITATION—continued**3 STATUTES OF LIMITATION—continued**

to be construed retrospectively *KHUSALBHAI v*
KABHAI **I L R, 6 Bom, 28**

(b) STATUTE 21 JAC I c 16**40 ——— Action of contract—Cause of action—Breach of contract and refusal to perform**

et—In act on of contract the breach of a contract is the cause of act on and the Statute of Limitations runs from the time of the breach and not from the time of the refusal to perform the contract. In 1822 A purchased at a Government sale at Calcutta a quantity of salt part of a larger port on then lying in the warehouse of the vendors (the Government) where the salt was to be delivered. By the condition of sale it was declared that on payment of the purchase money the purchaser should be furnished with permits to enable him to take possession of the salt there was also a stipulation that the salt purchased should be cleared from the place of delivery within twelve months from the day of sale otherwise the purchaser was to pay warehouse rent for the quantity then afterwards to be delivered. The purchaser paid the purchase money and received permits for the delivery of the salt which was delivered to him in various quantities down to the year 1831 in which year an inundation took place which destroyed the salt in the warehouse and there remained no salt to satisfy the contract. The purchaser petitioned the

upon that report the Government refused to return the purchase money claimed in respect of the deficient salt. The purchaser then brought an action of assumpsit for recovery of the purchase money of such part of the salt as had not been delivered.

the final refusal and that the remedy was barred

LIMITATION—continued**3 STATUTES OF LIMITATION—continued**

by the statute *Semle*—There may be an agree

(c) OUDH RULES FOR

41. ——— ss 9 and 14—Suits on money bonds—Bond executed before annexation of Oudh

for money lent for a fixed period or for interest payable on a specified date or dates or for breach of contract unless there is a written engagement or contract and where registry offices existed at the time such engagement was registered within six months of its date. That section held not to apply in the case of a bond executed in 1855 before the

of their date or on bonds formally attested when there was no means of registry and all other suits for which no other limitation is expressly provided by these rules and a decree of the Judicial Committee of Oudh holding that a suit on the bond was barred by the three years limitation provided by s 9 of the rules reversed on appeal *SALIGRAM v AZIM ALI BEG* **10 Moore's I A, 114**

(d) BENGAL REGULATION III OF 1793 s 14

42. ——— s 14—Exemption from limit

SHUREEFFUTOONISSA

[3 W R, P C, 31 8 Moore's I A, 225

43. ——— Exemption from limitation—Distant residence—Good cause for delay—Beng Reg II of 1805 s 3—Where a party in pos

became a sufficient cause to preclude the owner from making an earlier assertion of her right so as to save her from limitation by bringing her within the exceptions of s 14 Regulation III 1793 and s 3 Regulation II of 1805 *IMAD ALI v KOOTHY BEGUM*

[6 W R, P. C, 24. 3 Moore's I A, 1

LIMITATION—continued.**3. STATUTES OF LIMITATION—continued.**

60. ————— *Beng. Reg. II of 1803, s. 18—Violent and forcible possession.*—This case, which was originally instituted in the Zillah Court at the time when no regulation for the limitation of suits applicable to the suit existed but s. 18, Regulation II, 1803, but which, having been appealed from the Zillah Court, was pending at the time that Regulation II of 1805, which corrected the Regulation of 1803, was passed, was held to be subject to the Regulation of 1805, as regards the forcible and violent possession taken by the defendants, who could not be allowed to plead their wrong in support of the plea of limitation. *LALL DOKUL SINGH v. LALL ROODER PURTAB SINGH* **5 W. R., P. C., 95**

61. ————— *Fraudulent or forcible acquisition.*—Regulation II of 1805, s. 3, which provides that the limitation of twelve years shall not be considered applicable to any private claims of right to immoveable property, if the party in possession shall have acquired possession by violence, fraud, or other unjust, dishonest means, must be considered with some strictness (otherwise the door would be opened widely to a large class of claims which ought properly to be barred), and the alleged fraudulent or forcible dispossession must be clearly established. *RAJENDER KISHORE SINGH v. PERLIAD SEIN* **22 W. R., 165**

62. ————— *Maintenance, Liability to pay.*—The *nullum tempus* clause of s. 3, Regulation II, 1805, does not apply to a case where the occupant was not a mortgagor or depositary, otherwise than as he was subject to pay a portion of the proceeds of the property to another during his lifetime. *GORDON v. ABGO MAHOMED KHAN* **[5 W. R., P. C., 68]**

(i) BOMBAY REGULATION V OF 1827.

63. ————— *s. 1—Miras land.*—The law of limitation contained in s. 1, Regulation V of 1827, applies to miras land as well as to all other descriptions of immoveable property. *Special Appeals, No. 2520 of 1850, Morris, Sel. Dec., 51; and No. 3064, Morris, S. D. A. Rep., Vol. II, overruled.* *SALU KOM RAGHUJI v. RAVAJI BIN RAMJEE* **[1 Bom., 41]**

64. ————— *ss. 3 and 4—Claim for account by representative of deceased partner against surviving partners.*—A right to an account claimed by the representatives of a deceased partner in a firm against his surviving partners fell under s. 4 of Regulation V of 1827, and was not a debt within the meaning of s. 3 of that Regulation. *BHAICHAND BIN KHEMCHAND v. FULCHAND HARICHAND* **[8 Bom., A. C., 150]**

65. ————— *s. 7, cl. 2—Claim without binding decree having been made.*—A case was within the exception contained in cl. 2, s. 7, Regulation V of 1827, of the Bombay Code (Limitation of Suits), by reason of a claim having been preferred to the authority that was then the supreme

LIMITATION—continued.**3. STATUTES OF LIMITATION—continued.**

power in the State, although a satisfactory and binding decree was not obtained. *JEWAJEE v. TRIMBUKJE*

[6 W. R., P. C., 38 : 3 Moore's I. A., 138]

66. ————— *s. 7, cl. 3—Age of majority.*—Held that Regulation V of 1827, s. 7, cl. 3, did not alter the Hindu law of minority, but only defined the period of limitation in cases of minority generally. *HARI MOHADAJI JOSHI v. VASUDEV MOHESHWAR JOSHI* **2 Bom., 344 : 2nd Ed., 325**

(j) ACT XXV OF 1857, s. 9.

67. ————— *s. 9—Act IX of 1871, s. 1—Minority, Disability arising from—Forfeiture of property of rebel—Repeal, Effect of.*—*B S*, the father of the plaintiff, who was in possession of an estate in Lohardugga, which had been granted to his ancestor by the Rajah of Chota Nagpore, was, on the 10th December 1857, after proceedings taken under Act XXV of 1857, declared to be a rebel, and it was ordered that all his property should be forfeited to Government. On the 16th April 1858, *B S* having been arrested was tried and convicted on a charge of rebellion, and sentenced to death. The sentence was carried out on the 21st April 1858, and an order was made on the same day by the Deputy Commissioner for the confiscation of his property. On the 1st April 1872, a suit was instituted by the plaintiff, then a minor, to recover possession of the estate of his father *B S*. Held that the suit not having been instituted within one year from the seizure of the property, was barred by s. 9, Act XXV of 1857, notwithstanding its repeal by Act IX of 1871. There being no exception in Act XXV of 1857 in favour of infants, the plaintiff was not entitled to deduct the time during which he was under the disability of minority. *KAPILNAUTH SAHAI DEO v. GOVERNMENT* **[13 B. L. R., 445 : 22 W. R., 17]**

68. ————— *Omission to adjudicate forfeiture of property—Seizure of property of suspected person.*—The property in suit was attached by the Magistrate in 1858, and seized in 1862, without adjudication of forfeiture, as provided by Act XXV of 1857, and the owner did not surrender himself to undergo trial, and did not establish his innocence, or prove that he did not escape or evade justice, within one year from the date of seizure, as provided by s. 8 of that enactment. Held that the suit was not barred by one year's limitation provided in s. 9 of the said Act, it being applicable to suits and proceedings in respect of property seized after conviction of the offender if he is tried, or after an adjudication of forfeiture if he is not in person present to take his trial, and not where there is a mere seizure by a Magistrate of a suspected person's property without further proceedings. *MAHOMED YUSUF ALI KHAN v. GOVERNMENT* **1 Agra, 191**

(k) ACT IX OF 1859.

69. ————— *ss. 18 and 20—Involuntary absence—Refusal to surrender.*—Although s. 18,

LIMITATION—continued.**3 STATUTES OF LIMITATION—continued**

date of the summary decree, or from the time when the plaintiff discovered that he could not obtain satisfaction of such decree SREENATH GHOSAL & BISNOYATH GHOSE

[B L R, Sup Vol., Ap, 10 5 W R, 100

(f) BOMBAY REGULATION I OF 1800 s. 13

52 ——— s 13—*Offer to compromise suit*
—*Admission—Residence of defendant out of jurisdiction*—The offer of a specific sum of money by way of compromise in no way involving an admission of the justice of the plaintiff's demand further than what may be inferred from the offer of any compromise (an inference which is never permitted), could not bring the plaintiffs within the

good and sufficient cause, within the meaning of the same exception, to excuse the plaintiff's delay in suing beyond the twelve years BHAKH CHUND & PURTAB CHUND

[5 W. R, P. C, 31 1 Moore's I A, 154

53 ——— *Suit for land—Land at*

(g) MADRAS REGULATION II OF 1802

54 ——— s 18, cl. 4—*Irregular proceed-*

VENGAMA NAIDOO

[1 W R, P. C, 309 9 Moore's I A, 68

55 ——— *Deduction of time bond was under attachment—Good and sufficient cause*—Where a bond was seized under legal process of attachment after it had become due, but before the lapse of twelve years from its date, and remained

LIMITATION—continued**3 STATUTES OF LIMITATION—continued**

under attachment for several years—*Held* that there was 'good and sufficient cause' for the lapse of time within the meaning of Regulation II of 1802 s 18 cl 4 and that a suit on the bond was therefore not barred KADARBACHA SARIU & RANGASWAMI NAYAR 1 Mad, 150

(A) BENGAL REGULATION II OF 1805

56 ——— *Suit for rent—Adverse possession—Suit for ejectment* A suit instituted by a zamindar in 1857, for the recovery of rent for six years and nine months preceding its commencement,

would be similarly barred CHUNDRA HULLEE DEBIA & LUCKHEE DEBIA CHOWDHRAIN

[1 Ind Jur, N. S, 25, 141 5 W R, P C, 1 10 Moore's I A, 214

57 ——— *Suit for possession*—Under Regulation II, 1805 sixty years is fixed as the absolute limit beyond which neither fraud nor any other special allegation will give a cause of action In a suit by Government against ghatwals, the defendants were found to have been in possession for a very long time and although they had failed to prove possession on excess of sixty years, the onus was held to be on the Government to prove possession within sixty years BROMANUND GOSSAIN & GOVERNMENT

[5 W R., 136

58 ——— s 2, cl 2—*Suit for resumption and assessment by Government*—The right of Government to institute proceedings by or before the Revenue Collector under Regulation II of 1819 for the resumption of lands for the purpose of assessment to the public revenue was barred by Regulation II of 1805 s 2 cl 2, after the lapse of sixty years from the cause of action So held by the Judicial Committee of the Privy Council on appeal from a decree made by the Special Commissioner on a claim by Government where mahatara lands were held as *lakhtiaj* by the Raja of Burdwan before the Company's accession to the Dewany in 1765 and no claim had been made by Government to resume the lands for assessment till the year 1836 DHEERAJ RAJA MAHATAB CHUND BANADOO & GOVERNMENT OF BENGAL 4 Moore's I A, 466

59 ——— s 3—*Beng Reg XIX of 1793*

holder, or to resume the land as mal KASINATH KOOWAR & BANKURHARI CHOWDHRY

[3 B L R, A C, 446

S C KASHEENATH KOONWAR & BUNKO BRAHMA CHOWDHRY 12 W R, 440

LIMITATION—continued

3 STATUTES OF LIMITATION—continued

COOMAR DASIA
MANOOR BAHADOOR & MANOOR DASIA
4 W. R., 13
According to a 21 process of execution of decrees—

87.
could not
at the last
time previous
next after the passing of the Act whichever should first
expire. Absorptive, because unauthorized proceedings,
cannot give the decree holder any fresh writ for con-
structing limitations. BARODA DASIA & SHANKAR
CHANDRA
5 W. R., 21
Application of section—

82.
§ 21 applied to the first application after the passing
of that Act to execute a decree in force at the time of
the passing of the Act but on the next and subsequent
applications the rule contained in a 20 was to
be followed. GARGON & JUDGAT CHANDRA
HANSRAJ
DOORBA CHAND LOK & DINO MOHAN DASIA
10 W. R., 14
Issue of process of execution—The attachment of property in execution of
a decree although attachment was afterwards set
aside was a sufficient issuing of process of execution
within the meaning of a 21 Act XIV of 1859. KALKA
PURNABAI SINGH & JANKI DEVI NARAIN
17 W. R., 9

85
a 1 of Act IX of 1871 has reference only to suits
actually instituted before that date. JORANAM LOOR
& PAVI RAM DHONA
80 L. R., 54
MONOOL PURNABAI DECHIT & GURIA KANT I
L. R., 8 Cal., 61
L. R., 81 A, 123
BENARI LAL & GOVINDRAO LAL
L. R., 9 Cal., 446
GURUPADA DASARA & VINODAS LAL
L. R., 7 Bom., 459
Operation of Act—The
law of limitation applicable to suits brought after
1st April 1873 upon causes of action which had

86
See CASES UNDER LIMITATION ACT (XV)
of 1877)
(m) ACT IX OF 1871

89
GAVA
GURUPADA DASARA & VINODAS LAL
L. R., 9 Cal., 446
BENARI LAL & GOVINDRAO LAL
L. R., 8 Cal., 61
L. R., 81 A, 123
MONOOL PURNABAI DECHIT & GURIA KANT I
L. R., 8 Cal., 61
L. R., 81 A, 123
BENARI LAL & GOVINDRAO LAL
L. R., 9 Cal., 446
GURUPADA DASARA & VINODAS LAL
L. R., 7 Bom., 459
Operation of Act—The
law of limitation applicable to suits brought after
1st April 1873 upon causes of action which had

3 STATUTES OF LIMITATION—continued

April 1865, but the District Judge reversed his order,
being of opinion that decrees referred to in a 21 of the
Act might be saved from the operation of a 20 even
though no process of execution had issued within the
time provided for by a 21. Held that the right
construct on of the Act was to keep these sections dis-
tinct by applying a 20 to decrees or orders made
after the passing of the Act and a 21 to decrees
or orders in force at the time of the passing, so that it
was not necessary to resort to a 20 in constructing
a 21 if the word may in the latter section
were read as equivalent to 'must' or 'shall', on the
principle that affirmative words sometimes imply the
negative of what was not affirmed, as strongly as it

89
MARKUDA-LAL BACHARYA & STANAK
16 Bom., A C, 103
EX PARTE KALIDAS DAKORABAI KX PARTI HARVI
PURNABAI
3 Bom., A C, 175

admittedly bond *fide* was made for execution but
also refused on a similar ground. On appeal the
Commissioner and Chf Court confirmed this order.
Held reversing the decision of the Court below that
Act XIV
1869 the
shall app

90
COUNTS—Limitation under a 21 Act XIV of 1859
counted from May 5th, 1859 (the date of the passing
of the Act) and not from the date of its coming into
operation—From what period it
L. R., 41 A, 127
L. R., 3 Cal., 47
ONCHAND

LIMITATION—cont nued**3 STATUTES OF LIMITATION—continued**

Act IV of 1859 deals with the property of an offender on conviction and provides that the offender's failure to surrender himself within one year from the date of seizure would preclude the Courts from ques-

which deals with the rights of persons who are not

GOVERNMENT

1 Agra, 181

70 ——— s 20—*Forfeiture of rebel's property*—Where the property of a rebel has been sold any party claiming an interest in the thing sold is bound under s 20 Act IX of 1859 to bring his suit within one year from the date of the order of confiscation. **PROSONO PANDEY v GUNGA RAM**
[W. R., 1864, 2]

NEPAL SINGH v PAM SARIN SINGH

[W. R., 1864, 5]

NUNDUN SINGH v KOOLSOOM W R., 1864, 377

AMEEROONISSA v SHIB SUNDI 1 Agra, 271

71 ——— *Attachment of rebel's property*—The property of certain rebels was confis-

1859 **HAFIZ AMEER AHMED v HAFIZ NUZAL ALI**
[1 Agra, 46]

72 ——— *Disability of minority—Forfeiture of rebel's property*—Certain property in the actual possession of a rebel was confiscated by

construction nor can the saving clauses contained in the general Limitation Act XIV of 1859 be imported into a special enactment. Act IX of 1859 is plainly retrospective in its operation and applies to claims to

LIMITATION—continued**3 STATUTES OF LIMITATION—continued**

forfeited property which had been confiscated before its passing. **MANOMED BAHADUR KHAN v COLLECTOR OF BAREILLY**

[13 B L R., 292 21 W R., 318
L R., 11 A, 167]

73 ——— *Forfeiture of property—Cause of action*—In cases of confiscation limitation runs not from the date on which confiscation is sanctioned by the Government but rather from the date on which the property is actually attached on the part of the Government. **DEO KAREUN v MOHAMED ALI SHAH**
3 N W., 323

75 ——— *Suit to redeem after confiscation of mortgagee's interest*—Where the rights and interests of mortgagees only are confiscated and granted the suit to redeem by a mortgagee is not barred by s 20 Act IX of 1859. **RAM DHUN v BHOWANEE SINGH**
3 Agra, 139

78 ——— *Forfeiture of rebel's property*—A Hindu widow in possession of a six annas zamindari share of her husband's sold the share in 1855 to persons who in 1858 were convicted of

reversioner to her husband's estate on the ground

claim as reversioner. Held that the suit was barred by s 20 of Act IX of 1859. **Ramdhun v Bhawanee Singh 3 Agra 139 Bhuguan Das v Bannee Dhal 2 S D A N W P 1864 220 and Mahomed Bahadur Khan v Collector of Bareilly 13 B L R 392 L R 11 A 167 referred to PAMPHOL TIWARI v BADRI NATH**
[1 L R., 13 All, 108]

77 ——— *Suit by mortgagee for possession after foreclosure*—A suit by a mortgagee against a rebel's property is not barred by the date of seizure of the property by the Government. The Act allows a concurrent period of twelve years to sue in the ordinary Civil Courts for confirmation of civil rights. **GOBIND PANDEY v HEEMUT BAHADOOR.**
[6 W R., 42]

LIMITATION ACT, 1877—continued.

the case previous to the date on which Act XV of

LIMITATION ACT, 1877—continued.

into force, had already become barred by the opera-

tion of the prior Limitation Act. SHUMBAKATHI

[I. L. R., 5 Cal., 894; 8 C. L. R., 437

MONIKA CHANDER HOY CHOWDHURY v. GOVERN-
MENT DEY CHOWDHURY. 3 C. W. N., 163

Limitation Act.

2.

[I. L. R., 5 Cal., 894; 8 C. L. R., 437

Limitation Act.

[I. L. R., 5 Cal., 894

Limitation Act.

Guru Churn Lakh, I. L. R., 5 Cal., 894
6 C. L. R., 437, approved. Jto Mohi v. Manro v.
LUGHANPUR DINOH I. L. R., 10 Cal., 748

6. Debt, Suit for—

The law of limitation governing a suit for a debt is
that law which is in force at the date of its institu-

tion. MONHAN LAL, DEBROY KUDYAN

[I. L. R., 5 Cal., 340; 7 C. L. R., 121
HANSIDHAR v. HANSAHAI I. L. R., 3 AP, 340

5. 2.

came into before *Re Nation Kalangy, I. L. R., 2*
Bom., 145, followed *BENAR LAL v. GOVERNMENT*

Lat I. L. R., 5 Cal., 446; 12 C. L. R., 431

IL R., R., 11 Cal., 55

meaning of s 2 of Act XV of 1877 OXINTO LALI
DEX v. HOWELL. 2 C. L. R., 426

to be made where the period prescribed by the latter
Act would expire before the completion of two years

from the 1st October 1877 *Omaro Tall Day v.*
Howell, 2 C. L. R., 426, cited and distinguished

ADMINISTRATOR GENERAL OF BENGAL v. KEMAR
NATH MOITRAY 4 C. L. R., 102

3. Suit on promissory note on
demand executed prior to October 1877—shortening
period of limitation—As the Limitation Act (XV of

1877) shortens the period of limitation in the case of
promissory notes payable on demand, the period of

limitation in respect of such notes executed prior to
1st October 1877 is governed by the provisions of s 2

of the Act *HAKDI SUMARYA v. MADAYA PARIAT*
SRINAKA I. L. R., 3 Mad., 86

4. and art. 73—*Shorter*
period of limitation.—The period of limitation pre-

scribed by art 73 of the second schedule to Act XV
of 1877 is a "shorter period of limitation" within the

meaning of the last clause of s 2 of that Act than the

therefore that, as Act XIV of 1859 was applicable to

was made for execution The decree-holder was a

April 1862, certain proceedings were taken which

3. STATUTES OF LIMITATION—continued.

been barred under previous enactments, as well as to suits upon causes of action which accrue afterwards, was Act IX of 1871. *Rajchandra v. Sora*

[I. L. R., 1 Bom., 305 note

And see *Nocoon Chunder Bose v. Kaly*

Coomar Ghosh . I. L. R., 1 Cal., 323

97. Operation of Act—

General Clauses Act, 1868—The Limitation Act, 1871, came into opera-

tion from 1st July 1871 with respect to appeals and

applications, and was not controlled by the General

Clauses Consolidation Act, 1868, s. 6. *Govind*

Lakshman v. Narayan Mohanbhai

[11 Bom., 111

Bathishna v. Ganesh . 11 Bom., 116 note

Rughoon Nath Doss v. Shrimoneer Pat Mona.

24 W. R., 2

98. Operation of Act—Suit

barred when Act came into force—*Quere*—

Whether suits barred under Act XIV of 1859 before

Act IX of 1871 came into force could, by reason of

the alteration of the periods of limitation in the latter

enactment, be sustained. *Abdur Karim v. Manji*

Hansraj . I. L. R., 1 Bom., 295

99. Repeal of Act—Revi-

val of claim—*Repeal of Act*—A claim barred by

Limitation when Act IX of 1871 came into force was

not revived by the passing of that Act. *Vinayak*

Govind v. Babaji . I. L. R., 4 Bom., 230

100. Operation of Act—Suit

for maintenance—A claim once barred cannot be

revived by a change in the law of limitation. This

principle applies as well to a claim for arrears of

maintenance, or any other claims, as to one for posses-

sion of land. *Krishna Mohun Bose v. Okhinmoni*

Dosse . I. L. R., 3 Cal., 331

101. Operation of Act—Suit

on bond barred by Act XIV of 1859—The Limit-

ation Act, 1871, did not give a new period of limita-

tion to a suit on a bond which was barred by the

Limitation Act of 1859 before the Act of 1871 came

into force. *VENKATACHETIA Mudra v. SASHA-*

GHERAY RAY . 7 Mad., 283

102. Cause of action—Suit on bond payable on

demand—*Cause of action*—In a suit brought in August 1873 on a bond, payable on demand, dated July 1868, on which payment had been demanded on three occasions—May 1871, September 1872, and May 1873,—*Held* that, by the law in force at the time of execution of the document, the action was born in July 1868, and by the new as well as by the old law became barred in July 1871. The rule of the old as of the new law was that the time having once begun to run could not be stopped. The demand in 1871 could have no effect, for it was neither by the old

LIMITATION—concluded.

3. STATUTES OF LIMITATION—concluded.

not the new law a mode of giving a new point of

departure. *VENKATARAMAN v. MANOJ KANDU*

[7 Mad., 238

103. s. 2—*Bom. Reg. V of 1837*,

s. 1, cl. 1—*Prescriptive right*—*Repeal of statute*,

Effect of—In 1873 the plaintiff sued for his share in

certain ancestral property in the possession of the

defendants, and alleged that the latter had been united

with him in estate. He, however, admitted that

he had lived separate from the defendant for forty

years previously to the institution of the suit, and

that he had not during that period received any por-

tion of the profits of the ancestral property. The

defendant pleaded limitation. Both the lower Courts

held that the case was governed by Act IX of 1871,

sch. II, art. 127, and decreed in favour of the plaintiff

on the ground that no demand by the plaintiff of his

share and refusal to comply therewith had been proved.

Held by the High Court, in special appeal, that the

defendant had acquired, under Regulation V of 1827,

s. 1, cl. 1, a prescriptive title in the immovable

estate sued for by his uninterrupted possession as

proprietor for more than thirty years before Act IX of

1871 came into force, and that therefore the plain-

tiff's claim was barred, the effect of that Regulation

being not only to bar the plaintiff's remedy, but to

take away his right. The repeal of a statute or other

legislative enactment cannot, without express words,

or clear implication to that effect in the repealing Act,

take away a right acquired under the repealed statute

or other enactment while it was in force, and accord-

ingly, although Act IX of 1871, s. 2, sch. 1, expressly

repealed Regulation V of 1827, it did not affect any

presently existing right or title which had, under s. 1 of

that Regulation, been acquired before Act IX of 1871

was passed. *SIRAJ VASDEV v. KHANDRAY*

BATHISHNA . I. L. R., 1 Bom., 287

104. sch. II—*Suits before*

Act came into force—Act IX of 1871 did not apply

to suits instituted before the 1st April 1873.

LUGHAN PERSHAD NARAIN SINGH v. LUGHAN

DHAREE SINGH . 24 W. R., 295

105. art. 168—*Registration of memorandums of decree*

under Act XX of 1866—The "Indian Registration Act" mentioned in the new Limitation Act (IX of 1871), sch. II, art. 168, is the Registration Act of 1871, and that article cannot apply to a decree of which only a memorandum was registered under Act XX of 1866. *LUGHAN NARAIN SINGH*

LIMITATION ACT, 1877.

1. Operation of Act—Matters

barred by Act IX of 1871—Unless it can be shown

that such was the express intention of the Legislature,

none of the provisions of the present Limitation Act

(XV of 1877) can be made applicable to any matter

which, at the time when such Limitation Act came

LIMITATION ACT, 1877—continued

Defendant—Person through

of that is put in possession, by reason of which he becomes liable to be sued by the true owner. He therefore derives such liability within the contemplation of s 3 of the Limitation Act (XV of 1877) from or through the judgment debtor M, the owner of five thousand shares mortgaged fourteen of them to

The result is that, in cases of a purchase not in good

L. R., 9 Bom., 475
Said filed after repeal of

claim being disallowed
HARDI BEGUM
N. C. L. R., 443

and art. 11—Claim to
mortgaged property—Execution of decree—In
execution of a decree upon a mortgage, a claim

the property. The period of limitation for such a
suit under Act XV of 1877 is one year from the date

notified Ray Chunder Chatterjee & Co
DHOOSODUN MOOKERJEE
L. R., 8 Cal., 885 10 C. L. R., 435

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1877, to execute a decree passed on the 27th May 1874
(which decree at the time of the application for exe-
cution, was barred by art 107 of sch II of Act
IX of 1871) on the ground that he was entitled
to take advantage of art 179 of sch II of Act XV
of 1877, which was more favourable to him—*Heid*
that under the wording of s 3 of the latter Act, he
was not entitled to do so
Narsingh Doyal
HARSHAN SARKI
L. R., 5 Cal., 897. 6 C. L. R., 489

SHIVMOONATH SHARMA & GOVINDRAJ LALINI
L. R., 5 Cal., 894 6 C. L. R., 437

See BAKSHI . L. R., 23 Cal., 55
s 3

[L. R., 5 Bom., 680

3
Presentation of plaint—
Transfer of case—A suit was instituted in Pabna,

and on application to the High Court for authority
to proceed with it in Pabna, the High Court ordered
its transfer to Dacca. Instead of merely transferring
the suit to Dacca, the Pabna Court returned the
plaint, in order to its being presented anew in the
Dacca Court. For the purpose of comparing limita-
tion the suit was held to have been instituted on the
day when it was admitted by the Pabna Court
KAMUNUK CHOWDHURY
TAKUPODEEN LALMOED KENAK CHOWDHURY
3 W. R., 20
Khatat Chunder Ghose & Narsingh SARKI
16 W. R., 47

4.
Presentation of plaint—
Placing a petition on file—It must be presented
to the proper Court. The placing a petition on the
table when the officer is not present is not a present-
ation to him
Taj Uddin Khan & CHANDOO-
UL-KHISA
3 N. W., 341

LIMITATION ACT, 1877—continued.

period prescribed by art. 72 of the second schedule to Act IX of 1871. The language of Acts IX of 1871 and XV of 1877 leads to the conclusion that by each of these enactments the starting point and period given in its schedule were to take the place of all suits instituted after the date of the Act coming into force, and that the expiration of the period, calculated with reference to the Act in force at the date at which the note was executed, does not necessarily affect the remedy. *APPARANI v. ANANTHARAO*

5. I. L. R., 2 Mad., 118

Bond of 1869 payable on demand—Curtailment of period of limitation.

Where a suit was brought upon a registered bond, dated 1869, payable on demand, and demand was made in September 1870.—*Held* that the period of limitation was in effect curtailed by Act XV of 1877, and that the plaintiff was entitled to two years from 1st October 1877 under the provisions of s. 2, although under Act XIV of 1869 (in force when the bond was executed) the limitation period was six years from the date of the bond. *SANAPATI CHETTI v. CHANDRAMA CHETTI*. I. L. R., 2 Mad., 387

6. Registered bond payable on demand—Act XIX of 1859 (Limitation Act)—

Act IX of 1871 (Limitation Act).—The cause of action in a suit on a registered bond bearing date the 2nd March 1870 was alleged to have arisen on the 6th January 1879, the date of demand. Under Act XIV of 1869, the limitation for such a suit was six years computed from the date of the bond. Before that period expired, Act IX of 1871 came into force, which provided a limitation for such a suit of three years computed from the date of demand. *Held* that, as the cause of action and the institution of such suit occurred after the repeal of Act IX of 1871, the provisions of that Act were not applicable, and accordingly, whether Act XIV of 1869 or Act XV of 1877 governed such suit, it was barred, as in either case limitation began to run from the date of such bond. *BANSI DHAR v. HAN SARAI* I. L. R., 3 All., 340

7. I. L. R., 3 All., 340

*Bond payable on demand—Act IX of 1871 (Limitation Act).—Act XV of 1877, by making the period of limitation for a suit on a bond payable on demand computable from the date of its execution, has shortened the period of limitation prescribed for such a suit by Act IX of 1871, under which the period was computable from the date of demand. *Held* therefore that under the provisions of s. 2 of Act XV of 1877 a suit on such a bond executed on the 14th December 1869, having been brought within two years from the date that Act came into force, was within time. *RUT KISHORE v. MOHNI*. I. L. R., 3 All., 415*

8. Bond—Change in Limitation Acts.—The defendant executed, on the 20th April 1876, a bond to the plaintiff, who, without making a demand for his money, filed a suit upon it on the 21st of June 1878. *Held* that under s. 2 of the Limitation Act, XV of 1877, the suit was not barred, although more than three years had elapsed

since the date of the bond. *ICHINAYANKAR v. KATA*. I. L. R., 4 Bom., 87

9. and art. 64.—Suit on account stated—Act IX of 1871 (Limitation Act).

sch. II, art. 62.—The accounts in a suit on an account stated were stated when Act IX of 1871 was in force, and were not signed by the defendant or an authorized agent on his behalf. *Held* that Act been in force when the suit was instituted, the suit would have been within time under art. 62 of sch. II of that Act. The suit was brought, however, after the passing of Act XV of 1877, and by reason of the accounts not being signed did not come within the scope of art. 62 of sch. II of that Act. *Held* that the words in s. 2 of Act XV of 1877, "nothing herein contained shall be deemed to affect any title acquired under the Act IX of 1871," did not save the plaintiff's right to sue on the account stated, a right to sue not being meant by or included in the term "title acquired," that term denoting a title to property and being used in contradistinction to a right to sue; that the last clause of that section was not applicable, because Act XV of 1877 did not prescribe a shorter period of limitation than that prescribed by Act IX of 1871, but attached a new condition to the suit, viz., that the accounts must be signed by the defendant or his agent duly authorized in that behalf; and that the suit was in consequence barred by limitation. *TUTAKAP HUSAIN v. MUMTAZ LAT* I. L. R., 3 All., 148

10. Suit by person excluded from joint family property—Limitation Acts, 1871, art. 127, and 1877, art. 127.—Under Act IX of 1871, sch. II, cl. 127, the limitation for a suit by a person excluded from joint family property, to enforce a right to share therein, was twelve years from the time when the plaintiff claimed and was refused his share. Under Act XV of 1877, sch. II, cl. 127, the limitation for such a suit is twelve years from the time the exclusion becomes known to the plaintiff. *Held* that the period of limitation prescribed by the latter Act is shorter than the period prescribed by the former Act within the meaning of s. 2, Act XV of 1877. *NARAIN KHOOJA v. LOKNATH KHOOJA*

11. and art. 134.—Mortgage—Redemption—Suit against purchaser from mortgagor—Purchase in good faith—Limitation Act, IX of 1871, sch. II, art. 134 and 148.—

Under the Limitation Act, IX of 1871, the period of limitation for suits to recover possession of property purchased from a mortgagor depended upon the good faith of the purchaser. A suit against a purchaser in good faith was barred after twelve years from the date of the purchase, under art. 134 of sch. II. In other cases a suit might be brought against the purchaser within sixty years from the date of the mortgage, under art. 148 of sch. II. Art. 134 of the latter Limitation Act (XV of 1877), by the omission of the words "in good faith" makes twelve years from the date of the purchase the period of limitation for all such suits, without reference to the question of good faith on the part of the purchaser.

action for suits. Where therefore a plaint was presented on the last day to save it being barred by

18 **L. R., 16 All., 65**
 Plaint insufficiently stamped when deemed to have been presented—*Suit Institution of—Civil Procedure Code (Act*

17 **L. R., 50 Cal., 41**
 Suit instituted within time—*Plaint insufficiently stamped—Order to supply the deficiency not complied with within the time allowed—Registration of plaint—Civil Procedure*

16 **L. R., 27 Cal., 376**
 Presentation of a plaint insufficiently stamped—*Plaint not rejected but the Court ordered to put in the deficient Court the within a certain time—Effect of such an order—Court Fees Act (VII of 1870) s. 28—Civil Procedure Code (Act XIV of 1882), s. 54—Held that*

where a plaint was presented in the proper Court within the time allowed for the purposes of limitation, the suit should be allowed for the Court fee, which was done within the time (the plaint) allowed a certain time to put in the insufficient stamp and the Court without rejecting it

demand of payment was made in writing and that there was any demand giving notice to the debtor that interest would be claimed from the date of the demand in such a case the creditor was not entitled to any interest before and after **SURENDRA KUMAR HASTI v. LAXMI BHARAT SINGH**
L. R., 27 Cal., 814
4 C W N., 818
19 **Suit filed before period of limitation expired but set aside on any**

20 **Registration of time of proceeding bond**
 side in Court without jurisdiction—two suits were brought for partition of the property of a deceased by his heirs under the Mahomedan Law—the first by his widow and six children in plaintiffs were permitted to be amended. The first plaint was accordingly re-presented in the subordinate Court as that of the widow. The second also in the

stamped. Six of them presented by the widow's children, stated explicitly that the duty payable thereon was included in that already paid on the widow's plaint which sum correctly represented the duty payable on the footing that the share of each formed a distinct subject matter. All the plaintiffs were by order placed on the file of the District Munsif

over 1894 more than twelve years from his death. **Held** (on the question of limitation) that the suits by the two children of the first wife were not barred as they should be treated as a continuation of their original joint claim, which had been instituted in the

24. Date from which appeal considered as instituted.—Memorandum of appeal returned for correction.—Where an appellant presented an appeal within the period of limitation therefor, and the Appellate Court returned the memorandum of appeal for correction without specifying a time for such correction, the appeal was presented within time, the date of its presentation being the date it was first presented.

JAGAN DATTA v. LALMAI. I. L. R., 1 All, 280
1877, 25
randum of
ation.—For
preferred when the memorandum of appeal is presented to the proper officer, and not when, where the memorandum of appeal is insufficiently stamped and is returned in order that the deficiency may be supplied, it is again presented. When an Appellate Court returns an insufficiently stamped memorandum of appeal, in order that it may be sufficiently stamped, it should fix a time within which the deficiency is to be supplied. SHERA PARVAS KHANLY SINGH v. SHERA GHOSIA SINGH. I. L. R., 2 All, 875

26. "Apparal presentat"—
Civil Procedure Code (Act IV of 1852), s. 51—
Execution of decree.—The words "apparal presentat" in the Limitation Act, 1877, mean an appeal presented in the manner prescribed in s. 51 of the Code of Civil Procedure. The words "where there has been an appeal" in art. 179 of 2 of sch. II of the Limitation Act, 1877, mean where a memorandum of appeal has been presented in Court. In execution of a decree against which an appeal has been presented, but rejected on the ground that it was after time limitation begins to run from the date of the final decree or order of the Appellate Court. CHANDRAM AKAHOOR KHANLY ACHYUT v. CHANDRAM MONDY I. L. R., 18 Cal, 250

27. Memorandum of appeal insufficiently stamped.—Deficiency in stamp on memorandum of appeal made good after period of limitation.—Court Fees Act (VII of 1870), s. 28.—
A memorandum of appeal, insufficiently stamped, was presented in the Court of the District Judge on the 24th May, the last day allowed for it by limitation, and was received, and a memorandum in order on it, Appeal within time, stamp duty insufficient H201 odd. On the 27th May an order was

the report or the letter of s. 28 of the Court Fees Act, and these proceedings were not such as were contemplated by that section, nor such as to put the appeal in order when the stamp duty had been properly paid, and that the appeal had been properly dismissed as being out of time. Balkarum Kas v.

28. Stamp offered after expiry of time of appeal.—Where a petition of appeal was presented within the period of limitation, and the stamp was ultimately affixed after the appeal would have been barred by limitation.—Held, following *Shivani v. Orai*, I. B., 61 A, 126 that the appeal was in time. BHAKTA SARKAR v. SUB COOLECTOR of NORTH ANCOET. I. L. R., 15 Mad., 78

29. Unstamped memorandum of appeal.—Stamp offered after expiry of time of appeal is a document included in the first and second schedules to the Court Fees Act (VII of 1870), and is a document within the meaning of ss. 4, 23, 28 and 30 of that Act and therefore cannot be filed or properly stamped, it is not at that time a memorandum of appeal within the meaning of s. 51 of the Code, and the appeal cannot be regarded as having been at that time presented within the meaning of s. 4 of the Limitation Act, or as valid for any other purpose except in the events specified in s. 28 of the Court Fees Act. When a memorandum of appeal, which, when tendered, was insufficiently stamped, has subsequently been sufficiently stamped, the affixing of the full stamps cannot have a retrospective effect so as to validate the original presentation, unless it has been done by order made under the second paragraph of s. 28 of the Court Fees Act. In the case of a High Court, such an order can be made only by a Judge, and by him only in cases "of mistake or inadvertence." These words mean mistake or inadvertence on the part of the Court or its officers, and not on the part of the appellant or its advisers. The expression "head of the office" in s. 28 does not refer to the head of the office of a Court, or at all events to the head of the office of a High Court, acting not as such, but as a taxing officer, but it refers to the head of a public office such as the Board of Revenue. The officer mentioned in s. 5 of the Court Fees Act is not bound to advise parties as to the stamp required under the Act, or to give them notice that they have not sufficiently stamped documents which the Act requires to be stamped before presentation. A plaintiff contained a prayer for a declaration (i) that certain property was the joint property of the plaintiff, and (ii) that it was not liable to attachment and sale in execution of a decree held by one of the defendants

DIGEST OF CASES. (4757)

LIMITATION ACT, 1877—continued.

plaint.—for the purposes of limitation a suit must be considered to have commenced from the date on which the plaint was originally presented, and not from the date of its amendment. *Parvati Alavattar Narandas v. Bai Parson I. L. R., 19 Bom., 320*

21. _____ Presentation of plaint—
Return of plaint for amendment.—A plaint was

returned to the court on the day previous to the expiration of the time limited for suing, but it was returned by the plaintiff for the purpose of being examined by the insertion of the particulars required by Act VII of 1859, s. 26; and on the second day after (the intermediate day being Sunday), it was again presented, amended as required, and accepted. *Held* that the suit was commenced for the purpose of saving the Statute of Limitations, when the plaint was first presented to the Court, and that it was therefore within time, notwithstanding the day when it was presented after amendment was beyond the period of limitation. *SHAW CHAND LONDON & KATLY KANTH ROX*

[*Mawsh*, 336 : 2 HAY, 314

22. — Presentation of plaint— computation of time from which it runs.—Where

[illegible]

7 W. B., 157 . . . HUTTACHANABEE

123 W. R., 447
Kant Coomarr Shah v. Dwarakant Hazra
[5 W. R., 207
Husevtootah v. Amoo Mahomed Appoo
6 W. R., 39

23. _____ Presentation of plant—
stitution of suit—Return for amendment.—Under
provisions of Act IX of 1871, a suit is instituted

When a plaintiff is presented to a proper officer. The plaintiff, the limitation of whose suit expired on 5th October, presented his plate to the *Synodicate* Judge on 20th September, improperly stamped, and was returned to him with an order to make the deficiency good, without any time being specified within which the order was to be carried out. A motion superseceded. The deficiency was supplied, as after the Court opened. The defendant pleaded *Held* that, the date of presentation being as the date of institution for the purpose of calculating limitation, the suit was instituted within six months of the date of presentation being made. *Grange v. Brough* 4. *Yusuf Ali* 6 N. W. 139.

LIMITATION ACT, 1877—continued.

leave to sue as a pauper, the only course open to the applicant is that declared in s. 413, viz. to institute a suit and the date of the institution of that suit for the purposes of limitation is the actual date thereof. The plaintiff could not then be regarded as a pauper, and s. 4 of the Limitation Act (XV of 1877) would have no application. *KRENAV HANOMANDEE v. KASHIMANAO VENKATESH* I. L. R., 20 Bom., 508.

LIMITATION ACT, 1877—continued.
and registered as a suit
CHUDREN MONKEY DABEA . I. L. R., 2 Cal., 389
Application to sue in

deliver a written judgment. Before the written judgment was delivered, the applicant offered to pay the usual Court-fee, and asked that the petition might be taken as a plaint filed on the date of the first a
the w
in s.
held to be .
I. L. R., 5 Cal., 807. 8 C. L. R., 223

38 Institution of regular suit

after refusal of application for leave to sue in forma pauperis—Civil Procedure Code (1882), ss. 403 and 409—Presentation of plaint—When an application for leave to sue as a pauper is refused, and the applicant subsequently brings a suit for the same matter on a full Court-fee, such suit dates, for the purposes of limitation, from the time of filing the plaint, and not from the date of the application for leave to sue as a pauper. After when leave to sue as a pauper having been granted, the applicant is disappointed. *NARAIN KUAN v. MEKHAN LAL*. I. L. R., 17 All., 528

39 Institution of suit after

forma pauperis—Non payment of stamp in time—Extension of time for furnishing security of costs of appeal—The plaintiff's suit having been dismissed on appearance under s. 99 of the Civil Procedure Code (Act XIV of 1882), she applied to have it restored to the list for hearing but her application was refused on the 21st September 1896. On the 17th October 1896, she petitioned for leave to appeal in forma pauperis against the order of the 21st September, and annexed to her petition an undated memorandum of appeal. On the 4th December 1896,

Petition to appeal in
I. L. R., 18 All., 206
I. L. R., 17 All., 526, referred to. *ANNAI BEAL v. NARAIN KUAN* I. L. R., 17 All., 526, referred to. *ANNAI BEAL v. NARAIN KUAN* I. L. R., 17 All., 526, referred to.

41

tion for leave to sue as a pauper as defendants to the suit, A B paid into Court the Court-fee necessary

the Court-fee. He paid the fees on the 12th August

proper stamp, asking to have it added to h

LIMITATION ACT, 1877—continued.

and, as a foundation for the latter relief, alleged collusion, fictitious transactions, and want of title. The decree in the suit, passed on the 14th September 1887, granted both the declarations prayed for. The defendants appealed to the High Court against the whole decree, and stamped their memorandum of appeal with a stamp of H10 only. On the 9th November 1887 it was tendered to a Judge for admission, and it then bore a report dated the 7th November by the officer appointed under s. 5 of the Court Fees Act, "report will be made on receipt of record." The Judge made an order, "admit, subject to stamp report," and the memorandum was then received by the office, and the appeal was entered on the register. On the 27th September 1888 the office reported that there was a deficiency in the stamp of H615; on the 9th November the taxing officer ordered that the deficiency should be made good; and on the 8th December 1888 it was made good. At the hearing of the appeal a preliminary objection was taken that the appeal had never been validly presented within time, or admitted, and that it could not be heard. Held that there was before the Court no valid appeal as to the merits of which the Court could give a decision. *BAKARAN RAI v. GOBIND NATH* (12 ALJ, 129).

30. Amendment of decree—*Civil Procedure Code*, s. 206.—

Under a proper interpretation of the preamble and s. 4 of the Limitation Act (XV of 1877), the rule of limitation is confined to the litigants, and is inapplicable to acts which the Court may or has to perform *suo motu*. S. 206 of the Civil Procedure Code empowers a Court of its own motion to amend its decree, and the mere fact that one of the parties has made an application asking the Court to exercise that power will not render the action of the Court subject to the rule of limitation. *Roberts v. Harrison, I. T. R., 7 Cal., 333; Vithal Jayaram v. Rakhni, I. T. R., 6 Bom., 586; and Kyalasa Goundan v. Ramasami Aiyar, I. T. R., 4 Mad., 172*, referred to. *DHAN SINGH v. BASANT SINGH* (8 ALJ, 519).

31. Amendment of plaint—*Civil Procedure Code*, 1877, s. 53.—The plaint in a suit for money charged upon immoveable property which described such property as "the defendants one biswa five biswas share within the jurisdiction of the Court," was presented on the 21st November 1878 within the period of limitation prescribed for such a suit by Act XV of 1877. It was subsequently returned for amendment, and having been amended by the insertion of the words "in mouzah S, per S," after the word "share," was presented on the 8th January 1879 after such period. Held that the date of the amendment of the plaint did not affect the question of limitation for the institution of the suit. *RAM LAL v. HARRISON* (2 ALJ, 832).

32. Application, Return of, for amendment.—Where an application is returned

LIMITATION ACT, 1877—continued.

for amendment, the period of limitation counts from the first presentation. *CHOWDHRY PUNDRA MANA-PATTA v. CHOWDHRY JONARDU MONA-PATTA* (6 W. R., 15).

Contra, *GOUR MONU SUMAN v. JUGGERNAH ACHARYA* (14 W. R., 446).

33. Calculation of period of limitation—*Civil Procedure Code*, s. 308.—Calculation of period of limitation in a pauper suit, the commencement of the suit must be reckoned from the day when the application to sue in *forma pauperis* was filed, and not from the day the application was admitted. *GOLDENRATH DUTT v. SEETARAM GOWD* (W. R., 53; 1 Ind. J., O. S., 66).

SEETARAM GOWD v. GOLDENRATH DUTT (174; 1 Hay, 378).

34. Payment of Court-fees by petitioner—*Civil Procedure Code*, 1859, ss. 308-310.—Date of institution of suit.—Where a person, being at the time a pauper, petitions, under the provisions of Act VIII of 1859, for leave to sue as a pauper, but subsequently, pending an enquiry into his pauperism, obtains funds which enable him to pay the Court-fees, and his petition is allowed upon such payment to be numbered and registered as a plaint, his suit shall be deemed to have been instituted from the date he filed his pauper petition, and limitation runs against him only up to that time. *SKINNER v. ORDE* (2 ALJ, 241).

Reversing the decision of the High Court (1 ALJ, 230).

35. Explanation.—*Explanation—Petition in suit in forma pauperis—Civil Procedure Code*, 1859, s. 308.—A put in a petition to sue in *forma pauperis* for possession of certain foreclosed property within the time specified by the Limitation Act, but on her failing to appear on two occasions when called upon to give evidence of her pauperism, the case was struck off so far as the application to sue in *forma pauperis* was concerned. At the instance of A, the case, however, was again re-opened, and a date fixed for her appearance. Two days prior to this date, but at a time beyond the limit fixed by the Limitation Act, A put in a petition asking that the petition which she then made to have her suit proceeded as an ordinary suit might be joined with her application to sue in *forma pauperis*, and the suit be filed in the ordinary way. The also put in the regular amount of stamp duty for an ordinary suit. On the point of limitation.—Held that the plaint must be considered as filed, not on the day of filing the application to sue in *forma pauperis*, but on the day on which the stamp duty was paid, and application made to have the suit tried in the ordinary way. The explanation to s. 4 of the Limitation Act only applies in cases where, under s. 308 of the Civil Procedure Code, the application for leave to sue in *forma pauperis* is granted, and the application numbered.

LIMITATION ACT, 1877—continued

DOORNIAM NAKAR
was not out of the
Durga Chahar NAKAR &
I. L. R., 26 Cal., 225
45 ————— and art. 178—Simmons

See COAST PRES AVE 1870 SCH I ARTS
4 AND 5
[1 T. H., 2 Calif., 128
See Letters Patent High Court
N W F. Cr. 27
[1 T. H., 11 Apr., 176
See SMITH CASES COURT—PRESIDENCY
TOWNS—PRACTICE AND PROCEEDING—
RE HEARING I L. H., 12 Rom, 408

Special law—The exceptions to section—
Acceptance to section—
 Art. 17 of 1871 apply only to cases dealt with under
 the General Act of Limitation. *THE SINGAPORE*
REVENUE DEPARTMENT

2
Mad Act V of 1859 as 14 39 Period of
Madras Forest Act
limitation—Forest to excuse delay—Delay in pre-
ferring an appeal and the Madras Forest Act
beyond the period prescribed by s 14 of that Act
may be excused under s 10 of the Limitation Act
1877. *Preseverance v. Madras Forest Act* (1883)
I. L. R. 10 Mad, 210

337
3 — *Held* that a suit for profits under
General Clauses Act (I of
1859) s. 27 —

is closed—The time that the Court are closed must be deducted in computing the period of 1 month on

MANEYMAN & LUTHERMAN
3 W R., 46
COTTON BAZAAR CHERRY & DEKARACHERRY
2 Mad, 468

done within time. MICHAEL KOONIN & LITTLE

[1] Born, 206
 NARAYAN MANDAL, BEVI MADHAB SINGH
 [4 B L H, F B, 32 13 W R, F B, 21
 DAREN RAYWOOD & HENAKUTU MANATOO
 [8 W. R., 223

47
 1. Presentation of petition to officer in charge of jail—In the case of appeals by prisoners in jail
 2. Presentation of petition to the officer in charge of the jail is for the purpose of the
 3. I mention Act equivalent to presentation to the
 4. Court, Queen v. Lindsay
 5. [1 L.R., 8 Mad., 258]

46. Act XIV of 1859 :—Claim against company being wound up—Continuance of suit—Where a company which was being wound up by the Court—Held that it was prosecuting a suit in Court within the meaning of Act XIV of 1859. He commenced a suit when the first writ in his claim to the official liquidator. In the matter of Act XIV of 1857 and Ganges Steam Navigation Company. House of Lords Case 2nd July 18, 1860

The present application therefore was held to have been made within the meaning of the Limitation Act for the reason that the application has expired not when the summons was signed by the Registrar, but when the matter came before the Judge which was more than three years from the time when the right to apply accrued. **MUNSHI SINGH & KASSAY DAHLI Bhatt**

[4 B L R., 4p, 103, 13 W R, 351
 s 5 (1871, s 5)
 See Appeal in Criminal Cases—Acquit
 This Appeal from
 [1 L R., 2 Cole, 430]

DOOLAR BOY
IC L H, 291

LIMITATION ACT, 1877—continued

LIMITATION ACT, 1877—continued.

On second appeal to the High Court.—*Held* (reversing the decree and remanding the case) that the appeal was not barred by limitation. By *RAMAN, C.J.*, on the following grounds:—In the case of appeals, s. 592 of the Civil Procedure Code requires two separate documents to be presented,—a memorandum of appeal and an application for leave to appeal as a pauper. When the Judge necessarily dispose of the appeal, he may still treat it as an existing appeal if the appellant desires to continue it. The application for leave to appeal, in view of the fact that the Limitation Act (arts. 152 and 170) prescribes the same time for filing an appeal and for applying for leave to appeal as a pauper, the practical result would be that in every case where an application for leave to appeal as a pauper is refused, the appeal, if then presented, would be time-barred. These considerations must have been in the mind of the Legislature when it enacted the Civil Procedure Code of 1882, as the Limitation Act was then in existence. The District Judge was therefore under no legal obligation to dismiss the appeal when he refused the appellant leave to appeal as a pauper, and that he did not do so was clear from the fact that he allowed the memorandum of appeal to be amended. S. 582A of the Civil Procedure Code indicates the will of the Legislature that appeals shall not be rejected on the ground of their not being sufficiently stamped if such insufficient stamping arose from the appellants' mistake. In analogy thereto the District Judge was acting within his powers when he allowed the appellant to stamp the memorandum of appeal. By *CANDY, J.*, on the ground that under the circumstances there was sufficient cause for not presenting the appeal within the proper time, and that the delay might be excused under s. 5 of the Limitation Act. *BAT FOU v. DESAI MAHOMMAD BHAYASIDAS* [I. L. R., 22 Bom., 849]

44. Application for leave to appeal as a pauper.—Time of presentation of the memorandum of appeal.—Consent of the applicant to pay sufficient Court-fee after the statutory period of limitation.—Sufficient cause.—Limitation Act (XV of 1877), s. 5.—Civil Procedure Code (Act XIV of 1882), s. 582A.—A suit was brought in form papers on behalf of a minor represented by his next friend in the Court of the Munsif, and it was dismissed under some alleged compromise. An appeal was preferred to the District Judge within time, but the memorandum of appeal was insufficiently stamped. An application was also filed with the memorandum of appeal for leave to appeal in form papers. At the time of the hearing of the said application, objection having been taken by the respondent that the minor had become entitled to certain immovable property, those representing the minor offered to pay proper Court-fee on the memorandum of appeal within a month. The Court allowed that to be done in the presence of both parties, and admitted the appeal. The Court-fee was also paid within the time allowed. On an objection by the defendant, appellant in the High Court, that the appeal by the plaintiff in the lower Appellate Court

was dismissed as barred by limitation. The appeal was accepted, but when it came on for hearing, it was dismissed as barred by limitation. *Limitation for subsequent appeal.—Such application for leave to appeal as a pauper.—Appellate papers appeal.—I. L. R., 24 Cal., 889*

43. *Appellate papers appeal.—Appellate papers appeal.—I. L. R., 24 Cal., 889*

42. Application to sue in form papers.—Refusal of application.—Dismissal of time granted for payment of Court-fee.—Payment of Court-fee after period of limitation.—Where an application for permission to sue in form papers is rejected, and a full Court-fee is considered, for the same relief, the suit must be considered, for the purposes of limitation, to have been instituted only after the payment of the Court-fee, and not at the date of presentation of the petition as a pauper. S. 4 of the Limitation Act does not apply to such a case. The plaintiff, on the 6th November 1890, applied for leave to sue in form papers for the recovery of immovable property. His application was rejected in May 1891, and time was given him to pay the full Court-fee, and his petition was then treated as the plaint in the suit. The period of limitation for the suit had then, however, expired, the cause of action being found to have arisen on the 28th November 1878. *Held* that the suit was instituted not when the petition to sue as a pauper was presented, but only on the payment of the full Court-fee, and it was therefore barred by lapse of time. *Keshav Ramchandra v. Narasimha Venkatesh, I. L. R., 20 Bom., 505*; *Arum Kar v. Mahabai Lal, I. L. R., 17 All., 241*, distinguished. *Arum Kar v. Narasimha Venkatesh, I. L. R., 24 Cal., 889*

41. *Application to sue in form papers.—Refusal of application.—Dismissal of time granted for payment of Court-fee.—Payment of Court-fee after period of limitation.—Where an application for permission to sue in form papers is rejected, and a full Court-fee is considered, for the same relief, the suit must be considered, for the purposes of limitation, to have been instituted only after the payment of the Court-fee, and not at the date of presentation of the petition as a pauper. S. 4 of the Limitation Act does not apply to such a case. The plaintiff, on the 6th November 1890, applied for leave to sue in form papers for the recovery of immovable property. His application was rejected in May 1891, and time was given him to pay the full Court-fee, and his petition was then treated as the plaint in the suit. The period of limitation for the suit had then, however, expired, the cause of action being found to have arisen on the 28th November 1878. *Held* that the suit was instituted not when the petition to sue as a pauper was presented, but only on the payment of the full Court-fee, and it was therefore barred by lapse of time. *Keshav Ramchandra v. Narasimha Venkatesh, I. L. R., 20 Bom., 505*; *Arum Kar v. Mahabai Lal, I. L. R., 17 All., 241*, distinguished. *Arum Kar v. Narasimha Venkatesh, I. L. R., 24 Cal., 889**

LIMITATION ACT, 1877—continued.

LIMITATION ACT, 1877—continued.

was not shown for not having presented the appeal within the limited period. In calculating the number of days limited for appealing, the period occupied by the Court in disposing of an application for review presented during the time limited for appealing must not be reckoned. **NOBO KISSEN SINGH v. KAMINER DASSEE** . . . **B. L. R., Sup. Vol., 349**
[2 W. R., Mis., 85: Bourke, A. O. C., 38]

26. ———— *Appeal preferred after time, Admission of—Ground for delay.*—In a case decided by a Deputy Collector, an appeal was preferred to the Collector, who rejected it, holding that he had no jurisdiction. An appeal was then preferred to the Judge, who also rejected it, on the ground of want of jurisdiction, and referred the parties to the Collector. The Collector accordingly tried the case, but his proceedings were quashed by the High Court as being without jurisdiction. The parties then applied to the Judge for a review of his order, which he refused to grant, suggesting an appeal. They accordingly filed an appeal, and the Judge reversed the order of the Deputy Collector. *Held* that the Judge, not having admitted the review as he might have done, was at liberty to treat the appeal as one filed after time on sufficient reasons assigned for the delay. **TROYLUCKHNATH CHUCKERBUTTY v. JHABBOO SHAIKH**
[10 W. R., 334]

27. ———— *Delay in appealing—Application for review.*—An application for review, if made within reasonable time and with due diligence, is a sufficient cause for delay in preferring an appeal, if the appeal is preferred as speedily as may be after the other proceedings. **KULLER SINGH v. JEWAN SINGH** . . . **22 W. R., 79**

28. ———— *Appeal admitted out of time—Review pending—Time excluded—Review when excuse for delay.*—In calculating the period allowed by the Limitation Act, 1877, for presenting an appeal, the time during which an application for review of judgment is pending cannot be excluded as a matter of right. But if an application for review has been presented with due diligence and admitted, and there was a reasonable prospect that the petitioner would obtain by the review all he could obtain by appeal, the Court would be justified in admitting an appeal presented out of time. **VASUDEVA v. CHUNIASAMI** . . . **I. L. R., 7 Mad., 584**

29. ———— *Time for preferring—Pendency of application for review.*—In computing the period within which an appeal may be preferred, the time during which an application for review was pending is to be excluded. **IN THE MATTER OF THE PETITION OF BROJENDRO COOMAR ROY**
[B. L. R., Sup. Vol., 728: 7 W. R., 529]

PORESH NATH ROY v. GOPAL KRISTO DEB
[15 W. R., 61]

30. ———— *Date from which time for appeal runs where an application for review is admitted.*—Whether a review order is rightly made upon legal grounds or not, when once made it has the effect of re-opening the hearing and of causing the judgment passed upon such hearing to be the final judgment as regards the parties to that review;

LIMITATION ACT, 1877—continued.

consequently any such parties' right of appeal against the decretal order runs from the time of the final order on review, even if the Appellate Court should put aside the review matter. **ROOP KALEE KOBER v. DOOLAR PANDEY** . . . **20 W. R., 101**

31. ———— *Delay in filing—Grounds for delay.*—Delay in preferring an appeal should be explained. Inasmuch as a new statement of the law by the High Court is not a sufficient excuse for delay in applying for a review of judgment, it is still less an excuse for delay in appealing against a judgment. **MOWRI BEWA v. SOORENDRANATH ROY**
[2 B. L. R., A. C., 184: 10 W. R., 178]

AMRA NASHYA v. GAJAN SHUTAR
[2 B. L. R., Ap., 35: 11 W. R., 130]

32. ———— *Time for appealing—Alteration in law.*—An appeal will not be allowed after the time for appealing has expired, merely because a judgment altering the view of the law which prevailed at the time of the decision of the original suit has subsequently been given by the High Court. **MAKHUN NAIKIN v. MANCHAND LADHABHAI**
[5 Bom., A. C., 107]

33. ———— *Sufficient cause for admission of appeal after time—Appellate Court.*—A certain suit was dismissed on the 26th July 1875, on which day the plaintiff applied for a copy of the Court's decree. She obtained the copy on the 31st July, and on the 31st August, or one day beyond the period allowed by law, she presented an appeal to the Appellate Court. She did not assign in her petition any cause for not presenting it within such period, but alleged verbally that she had miscalculated the period. The Appellate Court recorded that it should excuse the delay, and admitted the appeal. *Held* that there was, under the circumstances, no sufficient cause for the delay. An Appellate Court should not admit an appeal after the period of limitation prescribed therefor without recording its reasons for being satisfied that there was sufficient cause for not presenting it within such period. **ZAIBULNISSA BIBI v. KULSUM BIBI** . . . **I. L. R., 1 All., 250**

34. ———— *Suits under Act X of 1859—Civil Procedure Code, 1859, s. 333—Act X of 1859, s. 161.*—Although in computing the period of limitation in suits under Act X of 1859 no deduction was allowed as in s. 14 of Act XIV of 1859, yet s. 161 of Act X of 1859, read together with s. 333 of Act VIII of 1859, gave the Court discretion to allow an appeal to be presented after time, on the ground that its pendency in a Court that had no jurisdiction "was sufficient cause for delay." **MOHOOSOODUN MOJOOMDAR v. BROJONATH KOOND CHOWDHRY** . . . **5 W. R., Act X, 44**

But see **KALEE KISHORE PAUL v. MONEE RAM SINGH** . . . **5 W. R., Act X, 46**

35. ———— *Admission of appeal after time—Discretion of Judge.*—It is in the discretion of the Judge to consider whether sufficient cause has been shown for the non-presentation of an appeal in proper time, owing to delay on the part of the Collector, to whom the appeal was wrongly preferred in

LIMITATION ACT, 1877—continued

16 ————— Time for presenting

quently the suit was not barred. *Gopal Chandra Nouluckha v. Krishna Chunder Das Biswas* I L R 5 Calc 314 and *Hossein Ally v. ...*

17 ————— Suit to compel registration—Registration Act III of 1877 s 77. The provisions of s 5 of Act XV of 1877 apply to suits instituted under the provisions of s 77 of the Registration Act (III of 1877). *NIJABUTOOLLA v. WAZIR ALI*

[I L R, 8 Calc, 910 10 C L R, 333]

18 ————— Suit under s 7 of Registration Act (III of 1877)—Filing of suit on reopening of Court where limitation expires on day when it is closed—When the period of limit

reopens is barred. *APPA RAU SANAYI ASWA PAU v. KRISHNAMURTHI* I L R, 20 Mad., 249

See *VEERANNA v. ABBIAN*

[I L R, 18 Mad, 93]

19 ————— Civil Procedure Code 1877 s 561—Time for filing objection—Holiday—Where the time for filing objections under s 561

20 ————— Civil Procedure Code s 561 Objection under—S 5 of Act XV of 1877 does not apply to an objection under s 561 of the Procedure Code. *KALLY PROSUNNO BISWAS v. MUNGALA DASSEE* I L R, 9 Calc, 631

21 ————— Objections to decrees—Civil Procedure Code 1877 s 561—Extension of time—The seven days within which a notice of

LIMITATION ACT, 1877—continued

to extend the period. *DEGANBER MOZUMDAR v. KALLYNATH ROY*

[I L R, 7 Calc, 654 9 C L R., 265]

22 ————— Objections taken under s 348 Civil Procedure Code 1879—Withdrawal of appeal—Ground for admitting appeal after time—The circumstance that a respondent who

Soorendra Nath Roy 2 B L R A C 134 10 W R, 178 followed. *SURDHAI DAYALJI v. RAGHU NATHJI VASANJI* 10 Bom, 397

23 ————— Time expiring when Court is closed—Execution of decree—Transfer of decrees for execution—Where parties are prevented from doing a thing in Court on a particular

was made and granted on the 2nd September 1889 and on the 9th of September (the Court having been closed from the 3rd to the 8th inclusive on account of the Mohurrum) the decree holder applied for execution under s 230 of the Code—Held that he was entitled to the benefit of the rule laid down in s 5 of the Limitation Act upon the broad principle above stated. *Shooshee Bhusan Rudro v. Govind Chunder Roy* I L R 18 Calc 231 applied in principle. *PEARY MOHUN AICH v. ANUNDA CHAMAN BISWAS*

[I L R, 18 Calc, 631]

24 ————— Admission of after limited period—Grounds for admission after time—Sufficient cause for delay—Act VIII of 1859

MUTU SAWMY

[4 B L R, Ap 84 13 W R, 245]

25 ————— Calculation of period allowed for—Reasonable ground for enlarging

LIMITATION ACT, 1877—continued.

R., S All., 475, referred to. HUSAINI BEGUM v. COLLECTOR OF MUZAFFARNAGAR

[I. L. R., 9 All., 11

Held on appeal under the Letters Patent, affirming the judgment of MAHMOOD, J., that the poverty of the appellant and the fact that she was a purdah-nashin lady did not constitute "sufficient cause" for an extension of the limitation period within the meaning of s. 5 of the Limitation Act, and that such extension ought not to be granted. *Moshauallah v. Almedullah, I. J. R., 18 Cal., 78, and Collins v. Vestry of Paddington, I. R., 5 Q. B. D., 368,* referred to. HUSAINI BEGUM v. COLLECTOR OF MUZAFFARNAGAR. I. L. R., 9 All., 655

43. — "Sufficient cause" for not presenting appeal within time—Admission of appeal—Discretion of Court.—In a suit for ejectment instituted in the Revenue Court under s. 93 (b) of the N. W. P. Rent Act (XII of 1881), the Court gave judgment decreeing the claim on the 15th September 1881. The value of the subject-matter exceeded Rs 100, and an appeal consequently lay to the District Judge; but there was nothing upon the face of the record to show that the decree was appealable. The period of limitation for the appeal expired on the 15th October, and the defendant, being under the impression that the decree was not appealable, applied to the Board of Revenue on the 8th January 1885 for revision of the first Court's decree. The proceedings before the Board lasted until the 24th April, when the defendant for the first time was informed that the value of the subject-matter being over Rs 100, the decree was appealable, and that the application for revision had therefore been rejected. On the 23rd May the defendant filed an appeal to the District Judge, who, under s. 5 of the Limitation Act, admitted the appeal, and, reversing the first Court's decision, dismissed the claim. *Held* on appeal by the plaintiff that, under the circumstances, the High Court ought not to interfere with the discretion exercised by the District Judge in admitting the appeal under s. 5 of the Limitation Act after the period of limitation prescribed therefor. *Per* EDGE, C.J., that under the circumstances above stated, he would not himself have held that the defendant had shown "sufficient cause," within the meaning of s. 5, for the admission of the appeal; but that the Court ought not to interfere with the discretion of the Judge when he had applied his mind to the subject-matter before him, unless he had clearly acted on insufficient grounds or improperly exercised his discretion. FATIMA BEGUM v. HANSI

[I. L. R., 9 All., 244

44. — Guardian and minor—Decree against minor—Neglect of guardian to appeal—Leave to appeal granted to minor after attaining majority—Sufficient cause—Limitation Act, s. 14.—One J died in 1886, and by his will directed his daughter-in-law, L, to adopt K, his nephew's son, and "to this lad as his inheritance" he gave the residue of his property. In a suit filed to have the will construed, a decree was passed on the 1st October 1887, declaring (*inter alia*) that, until his adoption by L, K was not entitled to any part of

LIMITATION ACT, 1877—continued.

the estate. K was then a minor, and was represented in the suit by his father and guardian. No appeal was made against the decree, but the guardian and L began to negotiate with each other as to the sum of money which each should receive out of the testator's residuary estate as the price of giving and receiving the boy in adoption. These negotiations continued until 1890, when L died, and the adoption directed by the will thus became impossible. In December 1894, K, alleging that he had only attained majority on the 14th of that month, applied for a review of judgment, but his application was rejected. In March 1895, he obtained a rule nisi for leave to appeal against the decree of the 1st October 1887. He submitted that the circumstances amounted to "sufficient cause" under s. 5 of the Limitation Act (XV of 1877), and that he had not unduly delayed his application after attaining full age. *Held* that the special circumstances did amount to "sufficient cause" under the above section, and that leave to appeal should be granted. The guardian was desirous that the adoption ordered by the decree should take place, hoping that he would obtain a large sum of money for giving the minor in adoption. His interests were therefore in conflict with those of the minor, and the interests of the latter were not sufficiently consulted in deciding whether or not to appeal against the decree. CURSANDAS NATHA v. LADKAVAHOO

[I. L. R., 20 Bom., 104

45. — Sufficient cause—Civil Procedure Code (1852), s. 108—Ex-parte decree—Limitation Act, s. 14.—In a suit for possession of certain lands, after the defendants had filed their written statements, a commissioner was appointed to hold a local inquiry. The commissioner having completed his inquiry, a day was fixed for the hearing of the suit, and on that date the pleaders for some of the defendants having informed the Court that they had no instructions from their clients, and the rest of the defendants having accepted the report of the commissioner, the suit was decreed in accordance with it on the 13th April 1893. On the 10th May following, one of the defendants, who was not represented at the hearing of the suit, made an application under s. 108 of the Code of Civil Procedure to have the decree set aside. The Subordinate Judge, on the 30th November 1893, rejected the application, holding that the petitioner had not only notice of the day of hearing, but he was actually present in Court on that day. The petitioner, on the 24th February 1894, filed an appeal to the High Court against that order, and, on the 18th January 1895, that appeal was dismissed on the merits. On the 30th March 1895, an appeal was presented against the original decree to the High Court, and it was contended that, under s. 5 of the Limitation Act, sufficient cause was shown for not filing the appeal within time. It was also contended that the time during which the petitioner was prosecuting his application under s. 103 of the Code of Civil Procedure should be excluded in computing the period of limitation under s. 14 of the Limitation Act. *Held* that s. 14 of the Limitation Act did not apply to appeals. *Held* also that this was not a case in which an application could properly be made under

LIMITATION ACT, 1877—continued

the first instance and the High Court has no authority to interfere with such exercise of discretion by the Judge **RAYCOOMAR ROY v MAHOMED WAIS**

[7 W R, 337

36 _____ *Power of Division Court*
to set aside an appeal

be impugned and set aside at the Division Court before which it was brought for hearing on the ground that the reasons assigned for admitting it were erroneous or inadequate **DURRY SAHAI v GANESHI LAL** **L L R, 1 All, 34**

s b of the Limitation Act

CHUNDER SIRCAR **I L R, 5 Calc, 1**

38 _____ *Appeal admitted after time by District Court—Power of subordinate Judge to dismiss such appeal—Where an*

39 _____ *Admission of when out of time by District Judge—Transfer of same to subordinate Judge for hearing—Power of subordinate Judge to dismiss such appeal—Where an*

40 _____ *Admission of appeal out of time—Ex parte order set aside at hearing—An order made ex parte under s 5 of the Limitation*

LIMITATION ACT, 1877—continued

Act 1877 admitting an appeal after the period prescribed therefor may be set aside on proper cause being shown by the Court which made it **VEN KATRAIDU v NAGADU** **I L R, 9 Mad, 450**

See MOSHAULLAH v AHMEDULLAH
[I L R, 13 Calc, 78

41 _____ *Appeal filed belatedly*

42 _____ *Appeal—Admission after time—Sufficient cause—Poverty—Pardah naslin—On the 14th February 1881 the High Court dismissed an application of the 2nd March 1883, by a pardahnashin lady for leave to appeal in forma pauperis from a decree dated the 16th September 1880 the application after giving credit*

All 35 referred to Held also by MAHMOOD J

Calc, 78, and Mangul Lal v Kandhas Lal, I L.

LIMITATION ACT, 1877—continued.

plaintiff applied for a review of judgment of the Appellate Court on the 27th January 1891. The petition of review was rejected on the 18th March 1891. Thereupon the plaintiff preferred a second appeal to the High Court on the 13th April 1891. *Held* that the second appeal was time-barred. The time taken in prosecuting the application for review could not be deducted in calculating the period of limitation, as the plaintiff had not shown that he had reasonable grounds for asking for a review. **PUNDLIK v. ACHUT** . I. L. R., 18 Bom., 84

52. *Ground for non-prosecution of appeal.*—The fact that the plaintiff's attorney, on being served with notice of appeal, failed to notice that a party who had been a defendant in the Court below had not been made a respondent in the appeal, coupled with the fact that the application made by the plaintiff to make such defendant a party respondent after the period of limitation had expired was not made at the earliest opportunity possible, is not a sufficient ground under s. 5 of the Limitation Act for non-prosecution of the appeal within the period allowed. **CORPORATION OF THE TOWN OF CALCUTTA v. ANDERSON** . I. L. R., 10 Calc., 445

53. *Mistake of counsel—Delay.*—“Sufficient cause.”—In a suit between *A* and *B* heard on the 29th January 1883, a certain conveyance was filed with the plaintiff, but up to the hearing this conveyance had been protected from discovery. *B*'s counsel had, however, had a copy thereof delivered to him at the time *B*'s written statement was being drawn, and a copy briefed to him at the hearing. At the hearing *A*'s counsel stated that the effect of the conveyance was to vest the entirety of a certain property in *A*; this view was accepted by *B*'s counsel, who did not read the conveyance. The only issue in the case was “who was in possession of the property,” and the Court decided this issue on the 5th February in favour of the plaintiff. On the 26th February *B* brought a suit against *A* to set aside this conveyance on the ground of fraud. And in certain proceedings in this case taken on the 31st March, *B*'s counsel discovered, as he alleged for the first time, that under the conveyance, a moiety of a seven twenty-fourth share remained in *B*. On that day instructions were given to *B*'s counsel to draw up a petition of review of the judgment of the 5th February. This petition, owing to the Easter vacation, was not, and could not have been, presented till the 9th April. In deciding whether *B* had shown “sufficient cause,” within the meaning of s. 5 of the Limitation Act, for not making the application within the time allowed by law, the Court, following the principles laid down by *Bowen, L.J.*, in *In re Manchester Economic Building Society, L.R., 24 Ch. D., 488*, in its discretion, held that “sufficient cause” had been shown by *B*. **Anderson v. Corporation of the Town of Calcutta, I. L. R., 10 Calc., 445**, distinguished. **IN THE MATTER OF THE PETITION OF SOLOMON. GOPAUL CHUNDER LAHIRI v. SOLOMON** . I. L. R., 11 Calc., 767

In the same case on appeal,—*Held* on the facts that there was no “sufficient cause” for not making an application for review within the time limited by

LIMITATION ACT, 1877—continued.

s. 5 of the Limitation Act, 1877. **GOPAL CHUNDER LAHIRI v. SOLOMON** . I. L. R., 13 Calc., 62

54. *Discretion of Court to admit appeal after time.*—Exercise by Court of the discretion given to it by s. 5 of the Limitation Act, 1877, by making person a respondent when the time for appealing against him had expired. **MANIKYA MOYEE v. BORODA PRASAD MOOKERJEE** [I. L. R., 9 Calc., 355: 11 C. L. R., 430]

55. *Appeal in pauper suit—Application for review.*—The language of the Limitation Act precludes any other construction than that while a pauper may apply for a review of judgment with the same indulgence as to delay in making the application as a person who is not a pauper, yet, in making his application for leave to appeal, similar indulgence is not extended to him. **LAKSHMI v. ANANTA SHANBAGA** . I. L. R., 2 Mad., 230

56. *Sufficient cause—Poverty.*—*Admission of appeal after time.*—Poverty is not “sufficient cause,” within the meaning of s. 5 of the Limitation Act (XV of 1877), for admitting an appeal after the ordinary period of limitation prescribed therefor has expired. **MOSHAVILLAH v. AHMEDULLAH** . I. L. R., 13 Calc., 78

57. *Application for leave to appeal to Privy Council.*—The provisions of the second paragraph of s. 5 of the Limitation Act (XV of 1877) do not extend to applications for leave to appeal to Her Majesty in Council. **Lakshmi v. Ananta Shanbhaga, I. L. R., 2 Mad., 230**, and **Ganga Gir v. Balwant Gir, Weekly Notes, All., 1881, p. 130**, referred to. **IN THE MATTER OF THE PETITION OF SITA RAM KESHO** [I. L. R., 15 All., 14]

58. *Discretion of Court—Appeal out of time, Admission of.*—S. 5 of the Limitation Act gives a discretion to a Court to admit an appeal filed out of time. *A* valued his suit at Rs18,000, which was reduced to less than Rs5,000 by the Court of first instance at Rajshahye. A decree, dated the 20th December 1883, was given against the defendant, who applied for copies on the 3rd of February, and the decree was ready on the 7th. The defendant was apparently under the impression that the appeal would lie to the High Court; but on the 16th of March a letter was despatched by his Calcutta agent informing him that he was mistaken, and that the appeal lay to the District Judge. This letter reached Rajshahye on the 17th, and the appeal was filed on the 23rd of March. *Held* that, under the circumstances, the Court might admit the appeal in the exercise of its discretion under s. 5 of the Limitation Act. **HURD CHUNDER ROY v. SURNAMOYI** [I. L. R., 13 Calc., 266]

59. *and s. 14—Delay—Sufficient cause—Deduction of time spent in another litigation in respect of the same subject-matter—Mistake of law.*—Mere ignorance of the law cannot be recognized as a sufficient reason for delay under s. 5 of the Limitation Act (XV of 1877). *A* obtained a decree against *B* as the heir and legal representative

LIMITATION ACT, 1877—continued.

s. 108 of the Code of Civil Procedure Even supposing that the decree could be called an *ex-parte* decree,

this was not a sufficient cause for not presenting the

48 ————— and s. 14—*Ground for admission of appeal after time*—The circumstances contemplated in s. 14 of the Limitation Act, 1877, will ordinarily constitute a sufficient cause in the sense of s. 5 for not presenting an appeal within the period of limitation **BALVANT SINGH v. GUMARI RAM**
(I. L. R., 5 All, 591)

47. ————— *Review—Application for review—Sufficient cause for delay—Pendency of second appeal—Ignorance of effect of judgment*—G obtained a decree against M in the Court of the Subordinate Judge of Ahmedabad for the refund of a certain sum of money alleged to have been illegally

the matter was *res judicata* and an appeal in the proceedings in the Small Cause Court to be stayed

48 ————— *Review, Exclusion of time*

LIMITATION ACT, 1877—continued

period of limitation prescribed for such appeal has passed **ASHANULLA v. COLLECTOR OF DACCA**

(I. L. R., 15 Calc, 242)

49 ————— *Time occupied in seeking review of judgment—Computation of time for appeal—Discretion of Court*—An appellant is not entitled as of right to the exclusion of the time occupied by him in seeking a review of judgment, in the computation of the time within which his appeal is preferred Where it appeared that the application

occupied **GOVINDA v. BHANDARI**

(I. L. R., 14 Mad, 81)

Court for review of a judgment passed on the 19th

that s. 6 and the first paragraph of s. 28 of the Court Fees Act (VII of 1870) were applicable that there was no mistake or inadvertence within the meaning of the second paragraph of s. 28, that the Judge had no power under the circumstances to admit the application as one presented after ninety days from the date of the decree; that there was no presentation within ninety days of an application which could have been received, that no sufficient cause had been shown within the meaning of s. 5 of the Limitation Act for not making the application within ninety days, and that the application was consequently barred by limitation, and ought to have been rejected **MUNRO v. CANNORE MUNICIPAL BOARD**

(I. L. R., 12 All, 57)

51 ————— *Application for review*

application for review may be considered as sufficient cause for delay in filing an appeal the appellant is bound to satisfy the Court that such circumstances did exist in his case, and that he had sufficient cause for not presenting the appeal within the prescribed period The plaintiff obtained a decree for possession of certain land in the Court of first instance This decree was reversed by the Appellate Court on the 28th October 1890 The

LIMITATION ACT, 1877—continued.

transfers from trying any suit cognizable by this
 within twelve years previous to the institution of
 unless (under *act*) the cause of action has arisen
 such suit, does not exclude such suits from the
 operation of the Limitation Act, 1877. *BEHAVAR v*
 1 I. L. R. 9 Mad. 118

s 7 (1871), 7, 1869, ss 11, 12)

See *LUXTON v I. L. R. 19 Bom. 135*

See *SALE IN EXECUTION OF DECREE—*

SITTING ASIDE SALE—General Case.

1 I. L. R. 9 All. 411

Disqualification to sue—

No other cause of abatement than those men-
 tioned in the Limitation Act is admissible to save
 limitation. *RAJ KISHORE AGRAWAL CHOWDHARY v*
 2 Lucknow Dist. Ct. 1884, 280

2 *Voluntary absence after*

attaining majority—The plaintiff's voluntary ab-
 sence abroad after attaining majority does not bar
 the operation of Act XIV of 1869. *VENKATACHARYA*
 2 Mad. 113

3 *Ignorance of account of*

cause of action by absence from country—Ignorance
 of the cause of action having accrued when owner

4 *Absence by reason of trans-*

portation—During the plaintiff's absence by reason
 of transportation the defendant took possession of
 land which previously belonged to him as a tenant,
 and the landlord allowed the defendant to hold as his
 tenant. He held possession for more than twelve
 years. In a suit by the plaintiff on his return to
 turn the defendant out of possession in which the
 landlord was made a defendant—*Itid* that the suit
 was barred there being no exception in the Limi-
 tation Act with regard to plaintiffs who are beyond two
 years in consequence of transportation. *DOWN v*
 3 Subrahmanya

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LIMITATION ACT, 1877—continued.

not made until the 10th, and then with unauthorised
 folios, and on the 11th the officer in charge made a
 report that the folios put in were unauthorised, and 9
 got the information the next day when he supplied
 the necessary folios and the copy was ready for
 delivery on the 10th, and the appeal filed on the 9th
 January next, that is, 37 days after decree—*Itid*
 that the Judge in the Court below was in error in
 throwing out the appeal on the ground that it was
 out of time, and that under the circumstances he
 might have exercised his discretion under s 6 of the
 Limitation Act. *Gopal Das v Ramji Day,*
 1 I. L. R. 13 Cal. 80, distinguished. *Sheelchand v*
Alakh, I. L. R. 13 Cal. 100, and Haro Chandra
Roy v Suranaray, I. L. R. 13 Cal. 266, referred to
 13 C. W. N. 55

5 *Delay in presenting appeal—*

Discretionary power of Court to excuse delay—
 Limitation Act, s 6A and s 14—s 6A of the
 Limitation Act (XX of 1877) is in s 14, a man-
 datory section but does not exclude the discretionary
 power of the Court, under s 5 to excuse delay in
 presenting an appeal. *SHANKAR BHARGAVA BHAY*
 1 I. L. R. 20 Bom. 736

1 *Act IX of 1871, s 6 of*

1 *Act IX of 1871, s 6 of*

1 *Act IX of 1871, s 6 of*

1 *Act IX of 1871, s 6 of*

1 *Act IX of 1871, s 6 of*

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1 *Act IX of 1871, s 6 of*

1 *Act IX of 1871, s 6 of*

1 *Act IX of 1871, s 6 of*

LIMITATION ACT, 1877—*con* used

of his deceased uncle C. The decree directed that the amount adjudged should be recovered from C's assets in the hands of B. In execution of this decree certain property was attached. B claimed this pro-

an appeal from the order in execution made on 20th November 1880. This appeal was rejected as time barred under art. 152 of sch. II of the Limitation

that intervened between the date of the order appealed against and the date of filing the suit **SITARAM PARAJI v NIMBA WALAD HARISHET**

[I L R, 12 Bom., 320]

60 ————— *Sufficient cause—Appeal*
Presentation of to wrong Court—The presentation of an appeal to a wrong Court under a *bona fide* mistake may be sufficient cause within the meaning of s. 5 of the Limitation Act. **Sitaram Paraji v Nimba** I L R 12 Bom. 320, explained **DADA BHAI JAMSETJI v MANEKEDA SORABJI**

[I L R, 21 Bom., 552]

61 ————— and s. 14—*Admission of*
appeal beyond time—“*Sufficient cause*”—*Appeal*

within the meaning of s. 5 of the Limitation Act for admitting the same appeal in the proper Court after the period of limitation prescribed therefor had expired. To enable the Court to admit an appeal after the period of limitation prescribed therefor had ex-

onest though mistaken belief formed with due care and attention that he was appealing to the right Court. **JAG LAL v HAR HARAIN SING**

[I L R, 10 All., 524]

62 ————— *Appeal preferred to*
wrong Court through mistake of law—*Exclusion of time*—S. 14 of the Limitation Act (X) of 1877 does not contemplate cases where questions of want of jurisdiction arise from a simple ignorance of the law, the facts being fully apparent but is limited to cases where from *bona fide* mistake of fact the suitor has been misled into litigating in a wrong Court. The phrase “other cause of a like nature”

LIMITATION ACT, 1877—*cont* used

— s. 2 — s. 1 to the District Court on the 1st

Bench determining the appeal of any question as to its admissibility after the period of limitation pre-

63 ————— *Sufficient cause—Deduction of time* appeal was prosecuted in wrong Court — *Limitation Act s. 14*—An appellant who has pre-

[I L R, 23 Cal., 526]

64 ————— and s. 14—*Sufficient cause to excuse delay*—*Mistake in law*—*Land*

desired to appeal against the decree dismissing the

appellant could not be excused. He did this the wrong Court could not be excused. He did this the District Judge should have decided whether the appellant under the special circumstances of the case in appealing to the High Court, acted on a bona fide belief formed with due care and attention as to bring the case within s. 14 of the Limitation Act and enable the Judge to admit the appeal. *Mistake in law may not be a sufficient cause* within the meaning of s. 14 of the Limitation Act. **ANNA v CHAKRABARTY**

[I L R, 12 Bom., 320]

account a sum of money to the defendant, and died without having received back the money, and the account was continued with the defendant by the mother and guardian of the minor and the balance was struck during the minority of the infant. It was within three years from the cessation of the disability further, the extension of the period of limitation

[4 Bom, A C, 189
38 Suspension of right of suit
for disability—Limitation begins to run against a mother on her succeeding to a family estate as the heir of her son and under no disability and cannot be

period of limitation may under the law be enlarged, still no new cause of action accrues to a subsequently born son at the date of his birth so as to enable him to postpone again the period of limitation which has begun to run against the family (GORDON COOMAR CHOWRY & HINDU CHANDER CHOWRY

[7 W R, 134
40 The mere fact of a plaintiff not suing within three years of his attaining

the cause of action accrued HADHAKHONTH GOWRI & MOHAKH CHANDER KOTWAL 7 W R, 3
41 Cause of action—X and Y three of the heirs of one H used the defendant in 1800 for possession of certain property left by H The defence was that the defendant had purchased the property from H in 1851, and had ever since been in possession. The

the time allowed them by s 11, Act XIV of 1859 held that, whether limitation would bar

33. Period of limitation—In a suit instituted before Act XIV of 1859 came into operation, the period of successive minorities might be deducted in reckoning the term of limitation. (MIRZULAL ROSE & RAJOREKARAT MITT 15 B L R, 10 23 W R, 214
34. Act XIV of 1859, as amended—Right of minor to sue by guardian—The benefit of ss 11 and 12 of Act XIV of 1859 is not

Guardian PHOOLBAS KOOVUR & LATTA JOSE
SUNH BANOR
[1 T R, 1 Cal, 226 26 W R, 285
L R, 31 A, 7
S C in lower Court, SADBAYAT PRANSHAD SANO

c. LATTA MITT BANAK PHOOLBAS KOOVUR & LATTA JOSE
JUGESWAR BANAK HIRAJAYAT LATTA & PHOOLBAS KOOVUR BANAK PHOOLBAS KOOVUR & PHOOLBAS KOOVUR
See BANAK MITT & BANAK MITT 14 W R, 339

35. Representative—Can the term "representative" in s 11, Act XIV of 1859, be extended so as to include any purchaser from the minor ending in his lifetime? Whatever may have been the effect of s 11 of Act XIV of 1859 as to extending the privilege given to a minor for his representative, s 7, the corresponding section of Act IX of 1871, limits the privilege to the minor himself and his representative after his death, and therefore a purchaser from a minor cannot claim the benefit of that section. (MANOKEE ANAND CHOWRY & JAKOOR ALTA 15 B L R, 357, 24 W R, 181

36. Suit by minor on admission of guardian—Suit to recover money advanced on a bond granted by the plaintiff father, on the allegation that the money advanced was the plaintiff's, who were minors at the time. In the absence of proof of character of the father's position it was held that, whether the money really belonged to the plaintiff or not they could only sue as the representatives of their father and that s 11 reversed them from deriving any advantage from their minority in computing the period of limitation

MOHAKH MITT & SHIVAN HINDOONH MITT 15 W R, 169
MUKOOTNATH & JAGWANT LATTA 3 Agra, 389
TAVOOR CHANDER BEN & DOORBA CHANDER BEN 120 W R, 2
37. Minority—Disability—Where the father of a minor lent on

37. Minority—Disability—Where the father of a minor lent on

6. ———— Trustee—Depository—Im-
movable property made over to defendant to sell
and pay to plaintiff—Limitation Act, 1859, cl. 15,
s. 1.—Where immovable property was given into the

LIMITATION ACT, 1877—continued

MINOR PHOS VNA NATH ROY CHOWDRY v AZZO LONNESSA BROUM

[I L R, 4 Cal, 523 3 C L R, 391

48 ——— *General principle of law as to the disability of minors—Interruptions of the Civil Procedure Code (Act XII of 1852)—Minor represented by a guardian—S 7 of the Limitation*

[I L R, 16 Bom, 536

49 ——— *Minority—Right to sue, —Personal exemption—Assignment by minor—* Under s 7 of the Limitation Act, a minor has in respect of a cause of action accruing during his minority, a right to sue at any time within three years of attaining his majority, but if during his minority, or if after attaining his majority and within three years thereof such person assigns all his rights and interests to a third party, who is *sui juris* the latter cannot claim the exemption accorded to the minor by s 7 of the Limitation Act but

50 ——— *Disability of minority—Sue by representative of minor in interest—Where*

years leaving some (say eight) years to run his representative in interest has only the remainder of the period of limitation (i.e. eight years) in the case

51 ——— *Malabar law—Compromise of doubtful claims by adult members of a tarwad—Sue by junior members to rescind the compromise—* In 1878 the senior members of a Malabar tarwad in bond fide compromise of certain doubtful claims gave an agreement to the junior members. Others of the junior members of the tarwad had attained majority more than three years before the suit and had not impugned the validity of the conveyance these persons were joined as defendants. None of the plaintiffs had attained majority in 1878. *Held* that the suit was barred by limitation. **MOIDIN KUTTI v BERNI KUTTI UMMAH**

[I L R, 18 Mad, 38

LIMITATION ACT, 1877—continued

52 ——— and *sch II, art 165—*

ation Act 1877 s 7 **RATNAM ATTAR v KRISHNA DOSS v TIAL DOSS** [I L R, 21 Mad., 404

53 ——— and *ss 9, 10—Minority of plaintiff—General Clauses Act (1 of 1868), s 3 cl 2—acknowledgment—Suit to recover principal and interest due on a registered bond executed by defendants in favour of the plaintiff's father. The*

gives a new period of limitation not an extension of the old period and the plaintiff being a minor at the date from which the new period was to be reckoned (viz. the acknowledgment), fell within the wording of s 7. **VENKATARAMAYYAR v KOTHANDARAMAYYAR** [I L R, 13 Mad., 135

This section does not apply to suits for pre-emption. Under the Acts of 1859 and 1871 it was decided that ss 11 and 12 of the Act of 1849 did not apply to pre-emption suits. **MURTAZA v LALLA NURSING SCHAE** [7 W. R, 88

and the cases of **JUNGDOO LALL v LALA ATUM CHAND** [7 W. R, 279

and **RAJA RAM v BANSI** [I L R, 1 All, 207

— **s 8 (1871, s 8)**

See **MADRAS REVENUE RECOVERY ACT, s 59** [I L R, 17 Mad, 189

years from the date of the loan. During that period there were several members of the family who were *sui juris*. After attaining his age of majority, **D** sued **A** for such money, and as the period limited by law for such suit has expired, relied on the saving **1877 Held** was one of a disability, family could have given a discharge to **A** with **D**'s concurrence, the provisions of s 8 of the Limitation Act were not

LIMITATION ACT, 1877—continued.

under order of Government—Mad. Reg. V of 1804—Mad. Reg. VII of 1808.—The Government, by directing the Court of Wards to take charge of an estate during the minority of the next claimants, does not constitute itself a trustee for the rightful owner. The wrongful invasion or continuance in possession of a stranger, whether with or without knowledge of the infirmity of his title, will not make the wrong-doer a constructive trustee unless he has been admitted into possession by a trustee. **PALKONDA ZAMINDAR (ZAMINDAR OF PALKONDA) v. SECRETARY OF STATE FOR INDIA**

[I. L. R., 5 Mad., 91]

16. ————— *Co-sharers — Trustees.*—The non-receipt of a share of the profits of an estate is no cause of action between shareholders from which limitation runs. **SHIBO SUNDARI DAS v. KALI CHURAN RAI** . . . **W. R., 1864, 296**

17. ————— *Trustee — Express trustee — Absent co-sharer.*—S 10 of the Limitation Act, 1877, has reference to express trustees, and in order to make a person an express trustee within the meaning of that section, it must appear either from express words or clearly from the facts that the rightful owner has entrusted the property to the person alleged to be a trustee for the discharge of a particular obligation. In 1813, *S*, being unable to pay the Government revenue due on his land, abandoned his village. In 1833, *H*, who had paid the revenue due by *S* and had taken, or obtained from the Government, possession of *S*'s land, attested a village paper, in which it was stated that, if *S* returned and reimbursed him, he should be entitled to his land. Sixty years after *S* abandoned his village, *B* as the representative of *S* sued the representative of *H* for such land, alleging that it had vested in *H* in trust to surrender it to *S* or his heirs on demand. As evidence of such trust, *B* relied on the village paper mentioned above, and on the village administration paper of 1862, in which it was stated that absent co-sharers might recover their shares on payment of the arrears of Government revenue due by them. *Held* that such documents did not prove any express trust within the meaning of s. 10 of the Limitation Act, 1877, and the suit was therefore barred by limitation. **BARKAT v. DAULAT** . . . **I. L. R., 4 All., 187**

18. ————— *Trust — Absconding co-sharer — Purchaser from remaining co-sharer, Right of.*—Where a clause of the *wajib-ul-urz* of a village stated in general terms that absconders from such village should receive back their property on their return, and certain persons who absconded from the village before the *wajib-ul-urz* was framed sued to enforce such clause against the purchaser of their property from the co-sharer who had taken possession of it on their absconding, and who was no party to the *wajib-ul-urz*, alleging that their property had vested in such co-sharer in trust for them, — *Held* that, assuming the trust to be established, as the purchaser had purchased in good faith for value and without notice of the trust, and was not the representative of such co-sharer within the meaning of s. 10 of Act IX of 1871, and had been more than

LIMITATION ACT, 1877—continued.

twelve years in possession, the suit was barred by limitation. **PIAREY LAL v. SALIGA**

[I. L. R., 2 All., 394]

KAMAL SINGH v. BATUM FATIMA

[I. L. R., 2 All., 460]

19. ————— *Trustee — Executor.*—An executor, who by the will is made an express trustee for certain purposes, is, as to the undisposed of residue, a trustee within the scope of s. 2 of Act XIV of 1859, for the heir or heirs of the testator. **LALLUBHAI BAPUBHAI v. MANKUVARBAI**

[I. L. R., 2 Bom., 388]

20. ————— *Suit by representatives of testator against defaulting executor.*—Where no steps had been taken against the assets of a defaulting executor who died in 1836, — *Held* that the claim of the representatives of the testator was barred by limitation, the Court declining to express an opinion as to whether, in another form of suit, the claimants might not follow their testator's assets under s. 2. **IN RE PALMER'S ESTATE** . . . **Cor., 68**

21. ————— *Suit to set aside trusts in trust-deed and to enforce others.*—S. 10 of the Limitation Act (XV of 1877) does not save a suit brought to set aside the trusts specified in a trust-deed and enforce resulting trusts not so specified. **COWASJI NOWROJI POORKHANAWALLA v. RUSTOMJI DOSSABHOY SETNA** . . . **I. L. R., 20 Bom., 511**

22. ————— *Specific property — Executors — Trustees — Suit for account.*—The firm of *C, T & Co.* acted as agents for the trustees of *G D*. It appeared from entries in their books, headed "Account of the Trustees for *G D*," that the firm had in their hands Rs 12,453 to the credit of the trustees in 1848, at which time the firm stopped payment. *D T*, a member of the firm of *C, T & Co.*, and *W S* were the trustees. In the earlier accounts the names of *D T* and *W S* both appeared; in the later ones, — namely, from 1842 until they were closed in 1848, — at the head of the account there was a memorandum written in small letters, "*D T*, trustee," but it did not appear that *W S* had ever renounced the trust, or conveyed the trust estate to *D T*. In 1846 *D T* died, leaving *G* and *T* the surviving partners of the firm, the executors of his will. *W S* survived *D T*. In 1867, the representative of *G D* brought a suit for an account against *G* and *T*, as the executors of *D T*. *Held*, upon the facts, that there was no proof that any specific property, the subject of the trust, had come to the hands of *G* and *T* as executors of *D T*, and any other claim was barred by s. 2, Act XIV of 1859. **MICHAEL v. GORDON** . . . **2 Ind. Jur., N. S., 271**

23. ————— *Trust — Charge of debts by testator.*—A charge of debts generally by a testator upon his property, or any part of it, will not affect limitation, because it does not at all vary the legal liabilities of the parties or make any difference with respect to the effect and operation of the statute itself. The executors take the estate subject to the claims of the creditors, and are in point of law trustees for the creditors, and such a charge adds nothing to

LIMITATION ACT, 1877—continued

possession of the defendant, under an order of a Revenue officer, which directed the defendant to sell the crops and after payment of Government dues, to account for the profits to the plaintiff on his claiming it, it was held that the defendant was not a depository, but a trustee of the property **VITAL VISHWANATH PRABHU & RAM CHANDRA SADASHIV KIRKIRE** 7 Bom. A C, 149

7. ———— *Trustee—Invasion of property not for person's own use*—Where property is vested in a person partly for charitable purposes and partly for the benefit of others, and he is bound to use it for such purposes and not for his own advantage, he is a trustee with the meaning of Act XIV of 1859, s 2 **ALLEN AHMED & NUSEEBUN** [21 W R., 415]

8. ———— *Trustee—Idol*—In a suit

against a trustee **RAJA SUNDARI DEDI & LUCHMI KUNWARI** 2 B L R., A C, 155

S C on appeal to the Privy Council **BHOOSODHARY DEB & LUCHMEE KOONWAREE** [15 B L R., 176 note]

9. ———— *Suit against dharmakarta of temple to recover money misappropriated*—Plaintiff as dharmakarta of a Hindu temple alleging that the defendant a former dharmakarta who had been removed from office had when in office, misappropriated certain temple funds held by him sued to recover a certain sum alleged to have been misappropriated *Held* that the defendant was a person

the suit might be treated as a suit for that purpose **SETHU & SUBRAMANYA**

[I L R., 11 Mad, 274]

10. ———— *Persons holding endowed property interest*—No limitation applies in the case of persons holding endowed property in trust and under accountability but no indulgence should be shown to a plaintiff who brings forward claims so stale and antiquated that difficulty arises in finding any reliable evidence whereby to decide on their validity and extent **BUZZ ROBIN & ISTAFUT HOSSAIN KHODFOONISSA BIRRE & LUTAFUT HOSSAIN** W R., 1864, 171

11. ———— *Suit to establish right to*

shebait was held to be not a suit between co-trustees to the share claimed but one to which the Law of Limitation would apply **MOHAMMAD DOSSET & BINDOO BASHINNE DOSSET** 19 W R., 35

LIMITATION ACT, 1877—continued

12. ———— *Specific trust—Suit to remove trustee*—In a suit brought for the purpose of

was barred by limitation *Held* that the suit was one for the purpose of following the property in the hands of trustees within the meaning of s 10 of the Limitation Act (XV of 1877) and therefore limitation did not run **BRELNATH BOSE & RADHA NATH BOSE** [12 C L R., 370]

13. ———— *Suit for possession against agent in charge of endowments property*—A suit for possession against an agent or deputy in charge of endowed property was not barred by limitation according to s 2 Act XIV of 1859 **GHOLAM NUJJUF & TOOSOODDUCK HOSSAIN** [1 W R., 126]

14. ———— *Religious endowments—Gosami muth—Grant by the head of the muth to his brother for his maintenance—Suit by a successor to recover the land*—In 144 a village was granted to the head of a gosami muth to be enjoyed from generation to generation and the deed of grant provided that the grantee was to improve the muth, maintain the charity and be happy. The office of head of the muth was hereditary in the grantee's family. In 1806 an amam title deed was issued to the then head of the muth whereby the village

object of the grant was. It was found regard being had to usage that the trusts of the institut on were the upkeep of the muth the feeding of pilgrims the performance of worship the maintenance of a water-shed and the support of the descendants of the grantee. From before 1840 it had been usual for the head of the muth for the time being to make grants to his brothers or younger sons for their maintenance. In 1842 the father of the present plaintiff being then the head of the muth granted certain lands in the village above referred to to his younger brother the deed of grant being in terms absolute the suit, possession mortgage

In 1863 the plaintiff's father died certain other

right of permanent occupancy. *Held* that s 10 of the Limitation Act was applicable and the suit was not barred by limitat on **SATHIANAMA BHAWATI & SARAVANABAGI AMMAL** I L R., 18 Mad, 200

15. ———— *Trustee—Constructive trust*—Court of Wards taking possession of estate

LIMITATION ACT, 1877—continued.

of the Limitation Act, 1877, would not apply. **MANICKAVELU MUDALI v. ARBUTHNOT & Co.**

[I. L. R., 4 Mad., 404]

42. ——— *Suit by cestui que trust against trustee—Trust.*—*A* alleged that his father *B* had, before his death, placed in the hands of *C* a certain sum of money, and had also transferred to *C* his landed property upon trust that *C* should, during the minority of *A*, hold the money and manage the property for the benefit of *A* and maintain *A*, and should, on *A*'s attaining his majority, make over to him the property and so much of the money as should then be unexpended; and that *C* had accepted the trust, but, upon *A*'s coming of age, had refused to render any account. *A* accordingly brought a suit for an account. *C* pleaded that *A* had attained his majority at a much earlier period than he alleged, and that the suit was barred by limitation. *A* replied that, under s. 10 of Act XV of 1877, his suit could not be barred by any length of time. *Held* that s. 10 of Act XV of 1877 did not apply to such a case, and that *A*'s suit would be barred if not brought within six years from the time when he attained his majority, and became entitled to demand an account. In India, suits between a *cestui que trust* and a trustee for an account are governed solely by the Limitation Act (XV of 1877), and, unless they fall within the exemption of s. 10, are liable to become barred by some one or other of the articles in the second schedule of the Act. To claim the benefit of s. 10, a suit against a trustee must be for the purpose of following the trust-property in his hands. If the object of the suit is not to recover any property in specie, but to have an account of the defendant's stewardship, which means an account of the moneys received and disbursed by the defendant on plaintiff's behalf, and to be paid any balance which may be found due to him upon taking the account, it must be brought within six years from the time when the plaintiff had first a right to demand it. **SARODA PRSHAD CHATTOPADHYA v. BROJO NATH BHUTTACHARJI**

[I. L. R., 5 Calc., 910; 6 C. L. R., 195]

43. ——— *Act XI of 1859, s. 31—Collector—Trustee—Suit for surplus sale-proceeds of sale for arrears of revenue.*—Where *A* instituted a suit in November 1889 to recover from the Secretary of State for India in Council the surplus sale-proceeds of three talukhs sold for arrears of Government revenue on 3rd October 1877, which sale-proceeds were in the hand of the Collector, *Held* that s. 31 of Act XI of 1859 did not vest the surplus sale-proceeds in the Collector as trustee, that a deposit did not necessarily create a trust, and that s. 10 did not apply. **SECRETARY OF STATE**

IA v. FAZAL ALI I. L. R., 18 Calc., 234

SECRETARY OF STATE FOR INDIA v. GURU PRSHAD DHUR I. L. R., 20 Calc., 51

44. ——— *Suit against a trustee.*—The plaintiff sued his father in 1887 for a declaration of his title to, and for possession of, certain property as being stridhanam property of his late mother, whose only son he was. The plaintiff alleged that some of the property had been given to the plaintiff's

LIMITATION ACT, 1877—continued.

mother about the time of her marriage in 1836; that in 1843 her father had appointed the defendant trustee of the property for the plaintiff and his mother, and that further sums had been since paid to the defendant in his capacity of trustee, on account of the stridhanam of the plaintiff's mother, and that he had traded with the property and misappropriated it. *Held* that, under Limitation Act, s. 10, the suit was not barred by limitation on the allegations in the plaint. **SATHU v. KRISHNA**

[I. L. R., 14 Mad., 61]

45. ——— *Laches—Suit against directors of company—Stale demand—Trustees.*—The plaintiff company was formed in 1864, and the company went into liquidation in 1867. In April 1890, the present suit was filed against the defendant, who had been one of the directors of the company, and it was alleged that, after the formation of the company, the defendant and his co-directors had carried on speculative dealings in shares of other companies and had used the funds of the company for this purpose, which was not warranted by the memorandum of association. The plaintiffs alleged that their dealings, which were duly set forth in their plaint, had resulted in a heavy loss to the company, and they now sought to recover from the defendant the sum of Rs. 37,700-13-5. There had been originally five directors of the company, but at the date of suit two of them were dead and two had become insolvent. *Held* (affirming the decision of **PARSONS, J.**) (1) that s. 10 of the Limitation Act (XV of 1877) does not apply to directors of companies, the directors not being persons in whom the property of the company is vested as contemplated by that section. (2) That in any case, the staleness of the demand was a valid defence to the action, the liquidators of the company having had full knowledge of the facts since the company went into liquidation, but no suit was filed until the expiration of twenty-three years. **KATHIAWAR TRADING CO. v. VIRCHAND DIPCHAND** I. L. R., 18 Bom., 119

46. ——— *Auction-purchaser—Assignee of trustee.*—An auction-purchaser acquiring trust property for valuable consideration at a sale in execution of a decree is an assignee of the trustee within the meaning of that term as used in s. 10 of the Limitation Act (XV of 1877), and consequently a suit against such a person by a plaintiff claiming to be entitled as trustee to possession of the trust property is governed by the ordinary rules of limitation and not excluded therefrom by the provisions of s. 10. **CHINTAMONI MAHAPATRO v. SARUP SE**

[I. L. R., 15 Calc., 703]

s. 12 (1871, s. 13; Act VIII of 1859, s. 333).

See APPEAL—ACTS—COMPANIES ACT.

[I. L. R., 18 All., 215]

See REVIEW—FORM OF, AND PROCEDURE ON, APPLICATION I. L. R., 17 All., 213.

1. ——— *Computation of period of limitation—Day on which cause of action arises.*—In calculating the period of limitation for bringing suits provided by Act XIV of 1859, the day on which

LIMITATION ACT, 1877—continued

their legal liabilities. But the case is different when particular property is given upon trust to pay a particular debt or debts. In such a case the trustee

may sue on s 10 of the A

MORE DARI v GRISH CHUNDER MITT

[I L R, 7 Calc, 772 8 C L R, 327]

24 ————— *Suit to recover property*

DUTT

26 ————— *Suit between co trustees*

—*Injunction to restrain some of trustees from excluding others from management of temple—Breach of trust Liability for loss occasioned by—*
The plaintiffs and defendants together with one S

the plaintiffs and defendants together with one S

the plaintiffs and defendants together with one S

the suit could not be regarded as a suit by the beneficiaries and was not within the operation of the Limitation Act s 10 (3) that the suit was not maintainable in respect of breaches of trust committed in the lifetime of the deceased manager as being to that extent barred by limitation and also for the

LIMITATION ACT, 1877—continued

defendants were liable to make good the loss occasioned by any breach of trust committed with or without the consent of the trustees

MAHABHABH

[I L R, 10 Mad, 338]

27 ————— *Suit against Secretary of*

State to recover possession of a khotsi village and mesne profits— In the year 1892 plaintiff brought a suit against the Secretary of State to recover possession of a khotsi village with mesne profits. It was

28 ————— *Express trust—Suit*

against trustees to charge property with trust— A suit against trustees for the purpose of charging certain property with the trusts declared by the author of the trust in respect of that property and for an account is a suit to follow property and as such is not barred by any lapse of time. **HURROO COO MARER DOSSEE v TABINI CHURN BISHACK**

[I L R, 8 Calc, 766]

29 ————— *Trust for specific purpose—Implied trusts—Adverse possession—*

The words of s 10 of the Limitation Act of 1871 mean that a person who has acquired possession of land

having become so subsequently by operation of law, the person or persons who for the time being may be beneficially interested in that trust may bring a suit against such trustee to enforce that trust at any distance of time without being barred by the law of limitation. The language of the section is specially

S C in lower Court

2 C L R, 112

30 ————— *and arts 118, 133, 134*

—*Trust for a specific purpose—Per GARTH, C.J—* The words in trust for a specific purpose are intended to apply to trusts created for some defined

followed. The phrase is a compendious form of

LIMITATION ACT, 1877—continued.

The joining of the decrees. KHUSHI LAL v. BHAWAR
KUSWAL 4 B. L. R., A. O., 131; 13 W. R., 222

Repeal. BHAGAT DASS v. KAMAL ROY

[1 B. L. R., 8 N., 1

S. C. BHAGAT BHAGAT SINGH v. KAMAL RAM

[10 W. R., 5

*This section is in harmony with the case of BHAGAT
HAI v. MOHAMMAD MOHAMMAD*

[1 Ind. Jur., N. S., 19; Bourke, 382

In which it was held that on the original side lay in
jurisdiction other copies of judgments afforded no
ground for not filing the memorandum of appeal
within the time prescribed.

15. *Time for obtaining copy
of judgment.* The time which intervenes between
the getting in stamps and obtaining a copy of the
decree shall be excluded from the time prescribed
for the presentation of an appeal. LAL GOPALSATH
SINGH v. PUNAM KUSWAL

[5 W. R., Min., 44

GOLDSNATH ROY v. GOLDSNATH CHATTERJEE

[8 W. R., Min., 108

16. *Exclusion of time neces-
sary for obtaining copy of decree—Copy of judg-
ment.* Appeal. In computing the period of ninety
days under s. 13 of Act IX of 1877 for filing an
appeal, the appellant is as a matter of right, entitled
to deduct the number of days required for taking
a copy of the decree only. The word "decree" in
that section does not include the "judgment." Under
the circumstances, however, the Court admitted the
appeal, although presented after time. HANU PAT-
TUCK v. BHAGWASINGH

[15 B. L. R., 273 note; 21 W. R., 308

17. *Deduction of time neces-
sary for obtaining copy of decree.*—In computing
the period of limitation prescribed for an appeal by
s. 13 of Act IX of 1877, the time from which the
period must be taken to run is the date of the decree
appealed against; and the days which under that
section may be excluded are only the days requisite
for obtaining a copy of the decree. But if in any
case it is impossible for the appellant to obtain a copy
of the decree or to obtain a copy of the judgment in
time, the Court, if satisfied that the appellant is not
to blame, may consider that there is sufficient cause
within the meaning of s. 5, cl. (4), of Act IX of 1877,
and may on application admit the appeal after the
period of limitation prescribed by the Act. JAGAR-
NATH SINGH v. SHEKHANATH SINGH

[15 B. L. R., P. B., 272; 24 W. R., 105

18. *Application for copy of
decree—Practice.*—A suit for possession of land
having been decided on the 6th January 1881, a copy
of the judgment was applied for on the 7th January,
but the paper and fees for the copy were not de-
posited till the following day. The copy was deli-
vered on the 31st January, and an appeal was filed
by the applicant on the 2nd March. The Court
to which the appeal was presented held that, accord-
ing to the practice of the Court, the fees ought to

LIMITATION ACT, 1877—continued.

have been paid on the day on which the application
was made, and in calculating the period of limitation
excluded only the period between the 8th and 31st
January, and accordingly rejected the appeal as having
been presented one day late. Held, on appeal to the
High Court, that the question as to whether the
period excluded should have begun on the 7th or 8th
was a matter to be determined by the practice of the
Court. NORIS CHUNDER ROY v. BROJENDRO COO-
DAR ROY

12 C. L. R., 541

19. — and art. 151—*Appeal—*

Time requisite for obtaining a copy of the decree.—
A plaintiff wishing to appeal from a decision passed
against him on the original side of the High Court,
dated 16th August 1883, presented for filing his
in memorandum of appeal to the Registrar on the
5th September 1883, but by reason of the decree not
having been signed on that date, no copy of the de-
cree was presented therewith. The Registrar refused
to accept the appeal. On the 6th September the
decree was signed, and on the 7th an office copy
thereof was obtained by the defendant's attorney,
who, on the 8th September, served a copy on the
clerk of the plaintiff's attorney. On the 12th Sep-
tember, the plaintiff applied for an office copy, which
he obtained on the 14th, and on the 15th tendered
such copy and his memorandum of appeal to the
Registrar. The Registrar refused to accept the ap-
peal, unless under an order of Court, it being in his
opinion out of time. On the 6th December 1883,
a Judge sitting on the original side admitted the ap-
peal. The appeal subsequently came on for hearing,
when the defendant contended that the appeal was
barred, it not having been filed within twenty days
from the date of the decree. The Court held that
the appeal was so barred. Held, on review, that the
plaintiff having allowed five days to expire after the
decree was signed before applying for a copy, and
not having filed his appeal, after so obtaining a copy,
at the earliest opportunity possible, such a delay
being entirely unaccounted for, could not be held to
be "time requisite for obtaining a copy of the de-
cree," and that therefore the appeal was out of
time. RAMAY v. BROUGHTON

[I. L. R., 10 Cal., 652

20. — *Exclusion of time neces-
sary for obtaining copy of judgment.*—Certain ac-
cused persons were convicted on the 29th February
1881, and made their first application for a copy of
the judgment on the 25th March, tendering stamped
paper for such copy on the 26th and 29th March.
The copy was prepared on the 30th, and the prisoners,
who had been admitted to bail on the 5th March,
presented their appeal on the 7th April 1884, which
was rejected as being out of time. Held that the
appeal ought to have been admitted. IN THE MATTER
OF JHABHU SINGH

I. L. R., 10 Cal., 642

21. — *Appeal under cl. 10 of
the Letters Patent.*—In computing the period of
limitation prescribed for an appeal under cl. 10 of
the Letters Patent, the time requisite for obtaining a
copy of the judgment appealed from cannot be de-
ducted, such copy not being required under the rules

LIMITATION ACT, 1877—continued.

the cause of action arose was to be excluded from the computation **MUNDY CHINNA COMARAPPA SETTI v. RAMASAMY SETHI** 4 Mad., 409

DURSHUN LALL SAROO v. ASHUTOOVISSA
[19 W. R., 94

2 ————— *Calculation of period of*

during which a suit was pending, the day on which proceedings therein were commenced and the day on which they ended should both be counted **HURRO SOODERPE DABEA v. KALLYMOHUN**

[Marsh, 138: W. R., F. B., 46. 1 Hay, 301

3. ————— *Exclusion of day on which*

[10 Bom., A. C., 104

4. ————— *Exclusion of day on which agreement was made*—In a suit for balance of an account styled, the defendant had given a written acknowledgment, on 22nd July 1867, that the sum sued for was due from him to the plaintiff. The plaint was presented on 22nd July 1870. Held the day on which the acknowledgment was made was to be excluded, and therefore the suit was not barred **MADAN MOHUN DAS v. GAUR MOHUN SIKKAR**

[8 B. L. R., 293 note

5. ————— *Suit on bond—Exclusion of date of bond*—The day mentioned in a bond for the repayment of money as that on which the money is to be repaid is to be excluded from the period of computation under the Limitation Act. The borrower in such case has until the last moment of the day mentioned for the payment, and the right to sue accrues not on but from, that day **L. PARTI PALANY ANDY PILLAI**

4 Mad., 330

6 ————— *Suit on bond—Exclusion of*

being the day on which the money was due accrued **RAM CHURRY DEY v. IMA SETHI** 24 W. R., 463

7. ————— *Exclusion of day on which*

LIMITATION ACT, 1877—continued.

which the bond was dated **VENKUBAI v. LAKSHMAN VENKUBA KUOT** I. L. R., 12 Bom., 617

8. ————— *Holiday—Cause of action—Promissory note payable on demand*—The plaintiff sued on a promissory note payable on demand dated November 14th, 1867. He filed his plaint on November 14th, 1870, that being the first day on which the Court was open after the Durga Puja holidays. The 13th November was Sunday. Held the day on which the note was made was to be excluded in computing the period of limitation, and that therefore the suit was not barred. **ABDUL ALI v. TARACHAND GHOSE** 6 B. L. R., 232

S. C. on appeal **TARACHAND GHOSE v. ABDUL ALI** 8 B. L. R., 24. 16 W. R., O. C., 1

MURTAZ v. RAM DYAL 3 Agra, 319

9 ————— *Civil Procedure Code, 1839, s. 246—Time for suing*—The day on which judgment is pronounced is not to be reckoned within the time allowed for bringing a suit under s. 246. **PETAMBUR SHAHA v. KUROONA MOYES DEBEA**

[W. R., 1864, 331

10 ————— *Civil Procedure Code, 1839, s. 246*—The day on which the order under s. 246 was passed must be excluded in computing the year allowed by that section **KASHEENATH SHAHA v. JOGENDRONATH BABOO** 22 W. R., 68

11. ————— *Computation of period of*

12 ————— *Computation of time*

VIJAYAM VUDALI v. MANOHIMANY ANNAL. VENKATA BALAKRISHNA CHETTI v. VIJAYARADU-NADHA v. ALALI KRISHNA GOPALAN 4 Mad., 32

13. ————— *Act IX of 1871, s. 13—*

GUJAR v. BARVE I. L. R., 2 Bom., 673

MANCHARAM KALLIANDAS v. RATICAL LALSHANKAR 8 Bom., A. C., 33

14 ————— *Execution of decrees—Holiday—Sunday*—A decree was passed on the 6th September 1865. Application for execution was made on 7th September 1868, the 6th September 1863 was Sunday. Held that the day on which the application for execution was made was not to be excluded from the computation, and that the application must be made within three calendar years from

LIMITATION ACT, 1877—continued.

of decree.—Judgment was pronounced by the lower Appellate Court, dismissing the appeal of the plaintiff, on the 29th March 1887. The decree was signed by the Judge on the 1st April, but, in accordance with s. 579 of the Civil Procedure Code, it bore date the day on which the judgment was pronounced. On the 15th April the plaintiff applied for a copy of the decree; on the 16th she received notice that the estimate of the costs of preparing the copy was prepared; on the 19th she paid into Court the amount required by the estimate. She had notice to attend on the 23rd for delivery to her of the copy, and on the 25th she attended and received the copy. On the 12th May she presented in the High Court, to the proper officer, an application, under s. 592 of the Code, for leave to appeal as a pauper. *Held* that the application was barred by limitation under art. 170, sch. II of the Limitation Act (XV of 1877), and that s. 5 of the Act did not apply. *Per* BOGGE, C.J.—In computing the period of limitation prescribed for an appeal or for an application for leave to appeal as a pauper, where the decree appealed against is not signed until a date subsequent to the date of delivery of judgment, the intermediate period should, under s. 12 of the Limitation Act, be excluded if the delay in signing the decree has delayed the appellant or applicant in obtaining a copy of the decree, and not otherwise. *Beni Madhub Mitter v. Matungini Dassi*, I. L. R., 13 Cal., 104, referred to. A delay caused by the carelessness or negligence of a party applying for copy of decree, such as negligence in coming forward to pay the money required, cannot be taken into consideration or allowed for in computing the time requisite for obtaining the copy. The time requisite, within the meaning of s. 12 of the Limitation Act, does not mean requisite by reason of the carelessness or negligence of the applicant: it means the time occupied by the officer who has got to provide the copy, in making the copy. The important date with reference to s. 12 and art. 170 is not the date when the copy of the decree is delivered, but the date when it is ready for delivery to the applicant if the applicant chooses to apply, where he has had notice that the copy will be ready on that date. *PARBATI v. BHOLA*. I. L. R., 12 All., 79

20. — *Delay in obtaining copies of judgment for the purpose of appeal—Limitation Act (XV of 1877), art. 170.*—In a suit for land the Court of first instance passed a decree for the plaintiff, the judgment and decree bearing date the 29th of September. Defendant, being desirous of appealing *in forma pauperis*, applied for copies on the following day. Stamp papers were called for on the 28th of October, but were not produced by the 31st, when the application was struck off under the copyist rules. On the 6th of November, a petition was put in explaining the circumstances which prevented the stamps being produced within the period of three days, and praying for restoration of the previous application. *Held* that the application of the 6th of November must be considered a continuation of the former one for the purpose of computing the time allowed by the Limitation Act within which an appeal

LIMITATION ACT, 1877—continued.

should be preferred to the District Court. *RAMANUJA AYYANGAR v. NARAYANA AYYANGAR*

[I. L. R., 18 Mad., 374]

30. — *Exclusion of time requisite for obtaining copies of the decree and judgment—Delay in presentation of appeal owing to Court being closed—Limitation Act, s. 5, and art. 152.*—If the period prescribed by the second schedule of the Indian Limitation Act, 1877, for the presentation of an appeal expires on a day on which the Court is closed, and if the appellant has not obtained copies of the decree and judgment before the closing of the Court and applies for such copies on the date of the re-opening of the Court, whilst his right of appeal is still alive, he is entitled to the benefit of the time requisite for obtaining the copies, and if his appeal be presented before the expiry of that time, it is not barred by limitation. A decree was passed against a defendant by the Court of a Munsif on the 17th of September 1894. The Appellate Court (Subordinate Judge's Court) was closed from the 6th of October to the 4th of November, both days inclusive. On the 5th of November, the defendant-appellant applied for copies of the decree and judgment. The copies were delivered to her on the 6th November, and on the same day she presented her appeal to the Appellate Court. *Held* that the appeal was within time. *SIYADAT-UN-NISSA v. MUHAMMAD MAHMUD* [I. L. R., 19 All., 342]

31. — *and art. 152—Appeal from decree or order—Civil Procedure Code (Act XIV of 1882), s. 205—Time from which limitation runs—Time requisite for obtaining copy of the decree—Time between pronouncement of judgment and signing of the decree.*—The time for presenting an appeal against a decree or order is thirty days from the date of such decree or order (art. 152 of the Limitation Act, XV of 1877). The date of the decree or order is the date on which judgment is pronounced. The time excluded from the period of limitation by s. 12 of the Limitation Act must be taken to commence only when the party appealing does something in order to obtain the copy of the judgment or decree, and to end when he obtains the copy. A party who delays to apply for such copy is not entitled to exclude the period of such delay. A party is at liberty to apply for a copy of the decree, whether the decree has been signed or not. If he has applied, but the copy cannot be prepared because the decree has not been signed, then this time and the time taken up in preparing the copy will be excluded, but so long as he has made no application, the non-signature of the decree can have no effect at all upon him. Judgment was pronounced on the 18th December 1897, rejecting an application made by a plaintiff in execution of a decree; but the bill of costs (the order as to costs being a part of the order or decree) was not signed until 18th January 1898. The plaintiff, proposing to appeal against the above order, applied for copies of the judgment and order on the 14th January. The copies were furnished to him on the 24th January 1898. The appeal was presented on the 24th February. The lower Court held the appeal barred by limitation under art. 152 of

LIMITATION ACT, 1877—continued

of the Court to be presented with the memorandum of appeal **FAZAL MUHAMMAD v. PHUL KHAN**

[I L R, 2 All, 192]

22 ————— *Time for obtaining copy*

ASGUR

W. R., 1864, 145

23 ————— *Delay in appealing —*

pronounced and that on which the decree was signed by the Judge was allowed to be deducted as coming within the words 'exclusive of such time as may be requisite for obtaining a copy of the decree' in that section. **IN THE MATTER OF CHOWDHRY MOHENDRO NABAIN ROY**

18 W. R., 512

* 24 ————— *Time for obtaining copy of judgment—The time requisite for obtaining a copy of the decree*

MITTER

9 C. L. R., 293

25 ————— *Appeal presented after time—Time requisite for obtaining copy of decree—Where a decree was passed on the 22nd September and application for a copy was made not until 29th, and then with insufficient folios and the Court was closed for the vacation from 6th September to 1st*

26 —————

Exclusion of time between

[I L R, 13 Calc, 104]

27 ————— s 5, and art 152—*Civil Procedure Code, ss 542-557—Time requisite for obtaining copy of decree—Exclusion of time be*

instance on the 23rd May 1887. The decree was

LIMITATION ACT, 1877—continued

signed on the 31st May. An application for copies was made by the defendants on the same day. Information of the estimate of the cost of copies was given to them on the 1st June but they did not comply with that estimate until the 9th June. The copies were delivered on the 11th June. On the 30th June the defendants filed their memorandum of appeal in the lower Appellate Court which on an office report that it was within time admitted it and fixed the 19th August for the hearing. On the 1st August another office report was submitted which showed that the appeal was beyond time

and cancelling his order of the 2nd August directed that the appeal should be heard. *Held* that the appeal was barred by limitation under art 15 of sch II of the Limitation Act (V of 1877) s 5 of the Limitation Act cannot be applied in making the computation of time provided for by s 12 and does not become applicable until after such computation has been made. *Raj Coomar Roy v. Mahomed Waris* 7 W. L. 337 dissented

remains unused such interval is not to be excluded from the period of limitation unless an application for copies having been made the applicant is actually and necessarily delayed through the decree not having been signed. *Bens Madhub Mitter v. Matungini Dass* I L R 13 Calc 104 dissented from. *Per* EDGE C J BRONHURST and YOUNG JJ—A Court in computing under s 12 of the Limitation Act 1877 the time requisite for obtaining a copy of a decree or of a judgment has no discretion and is confined to ascertaining for the purposes of such computation the time occupied by the office after application made in preparing the estimate and after payment of the amount of the estimate has been made the time occupied by the office in preparing the copy or copies ready to be delivered to the party who has applied for them. *Per* EDGE C J—The only section in the Limitation Act which relates to the time requisite for preparing an appeal or the period of compliance and due to causes beyond the control of the applicant such delay may be included in the time requisite for obtaining a copy. Whether or not such delay is unavoidable is a question of fact in each case. *BECHU v. AHSAH ULLAH KHAN*

[I L R, 12 All, 461]

28 ————— s 5, and art 170—*Application for leave to appeal as a pauper—Time requisite for obtaining copy of decree—Exclusion of time between delivery of judgment and signing*

LIMITATION ACT, 1877—continued.

the computation of the periods of limitation applicable to his claims the time during which the defendant is absent out of British territories. The law of limitation being a law which bars the remedy and does not destroy the right, if by any of its sections indulgence is shown to suitors, the Court will feel bound to give full effect to the language in which that indulgence is conceded. **MAHOMED MUSEEN-COFFIN KHAN v. MUSEENCOODRYS**

[2 N. W., 173]

2. and s. 9—*Continuous running of time*—*Exclusion of time of defendant's absence from British India.*—S. 13 of the Limitation Act, 1877, is not in any way affected or qualified by s. 9 of the same Act. In computing, therefore, the period of limitation prescribed for a suit, the time during which the defendant has been absent from British India should be excluded, notwithstanding that such period had begun to run before the defendant left British India. **Narvonji Bhimji v. Mugniram Chandaji**, I. L. R., 6 Bom., 103, dissented from. **BEAR & Co. v. DAVIS**

[I. L. R., 4 All., 530]

3. *Defendant's absence from British India—Computation of the period of limitation.*—*Adjusted and signed account.*—Ss. 9 and 13 of Act XV of 1877 adopt the law of limitation in England, and they must be read together in computing the period of limitation. Where the statutory period has once begun to run in respect of any cause of action, the subsequent absence of the defendant from British India will not stop it from running. The defendant adjusted and signed his account with the plaintiffs in Bombay on the 13th of January 1871, and shortly afterwards went to reside out of British India, in the territories of His Highness the Nizam. There was no subsequent payment of interest as such, and no payment of any part of the principal. *Held* that the plaintiffs' suit for the balance of the account was barred by the law of limitation, not having been brought within three years after the adjustment. **NARVONJI BHIMJI v. MUGNIRAM CHANDAJI**. I. L. R., 6 Bom., 103

4. *Defendant's absence from India.*—The plaintiff sued on a bond, dated 20th August 1879, payable by monthly instalments, the first to be due on 4th September 1879; the bond provided that, if default should be made in one instalment, the obligor should, if so required, pay the whole amount. The defendant made default in the fourth instalment, and no more instalments were paid, and no demand of payment was made until 30th January 1884. The suit was brought on 23rd April 1884. The defendant had been absent from India for more than two years and three months out of the four years and four months which had elapsed between the date of the defendant's default and the date of suit. *Held*, dissenting from **Narvonji Bhimji v. Mugniram Chandaji**, I. L. R., 6 Bom., 103, that, even if the cause of action had arisen on the 4th December 1879, nevertheless the suit was not barred, inasmuch as the period during which the defendant had been absent from India was to be

LIMITATION ACT, 1877—continued.

deducted in computing the period of limitation. **HANMANTRAM SADHURAM PITY v. BOWLES**

[I. L. R., 8 Bom., 561]

5. *Absence of defendant from British India.*—S. 13 of the Limitation Act, which excludes the time during which a defendant has been absent from British India in computing the period of limitation for any suit, does not apply to a case when, to the knowledge of the plaintiff, the defendant, though not residing in British India, is represented by a duly constituted agent and mookhtar. **HARRINGTON v. GONESH ROY**

[I. L. R., 10 Calc., 440]

6. *Absence from India—Defendant carrying on business by agent.*—The words "absent from British India" in s. 13 of the Limitation Act should be construed broadly, and not limited in their application only to such persons as have been present there, or would ordinarily be present, or may be expected to return. *Semble*—A defendant is within s. 13, notwithstanding his having carried on a trade or had a shop or a house of business under an agent in British India. **Harrington v. Gonesh Roy**, I. L. R., 10 Calc., 440, commented upon. **ATUL KRISHO BOSH v. LYON & Co.**

[I. L. R., 14 Calc., 457]

7. *Absence of defendant from British India—Defendant carrying on business in British India through an authorized agent.*—S. 13 of Limitation Act, which excludes the time during which a defendant has been absent from British India in computing the period of limitation for any suit, applies even where, to the knowledge of the plaintiffs, the defendants, partners in a firm, are during the period of their absence carrying on business in British India through an authorized agent. **Harrington v. Gonesh Roy**, I. L. R., 10 Calc., 440, overruled. **POORNO CHUNDER GHOSE v. SASSOON**

[I. L. R., 25 Calc., 498]

2 C. W. N., 269

8. *Absence from British India—Proceedings in execution of decree.*—The provisions of s. 13 of Act XV of 1877 are not applicable to proceedings in the execution of a decree. **AHSAN KHAN v. GANGA RAM**. I. L. R., 3 All., 185

s. 14 (1871, s. 15; 1859, s. 14).

The corresponding section of the Act of 1859 was held not to apply to cases under the Rent Act (X of 1859). **ROY KALLY PROSONO SEN v. KISTO NUND DUNDEE**. W. R., 1864, Act X, 13.

SOUDAMONEE DOSSEE v. POORNO CHUNDER ROY
[W. R., 1864, Act X, 113]

DABEE v. NUKELSUNNISSA
[W. R., 1864, Act X, 116]

JUGGURNATH ROY CHOWDHRY v. RAJ CHUNDER ROY. W. R., 1834, Act X, 120

RAM SUNKUR SANAPUTTY v. GOPAL KISHEN DEO. 1 W. R., 68.

MODHOO SOODUN MOJOONDAR v. BROJONATH KOOND CHOWDHRY. 5 W. R., Act X, 44

LIMITATION ACT, 1877—continued.

from the 14th January 1898, the judgment and order were applied for, to the 24th January 1898, on which date they were furnished. The judgment was pronounced on the

32. — s. 5, and art. 156—

the 10th April. *Hera* that, under the Limitation Act, the appellants were entitled to a deduction of the whole period between the 28th

33. — Civil Procedure Code,

PERIASAMI . . . I. L. R., 10 Mad., 313

34. — Application for certificate for appeal to Privy Council—Limitation Act (XV

LIMITATION ACT, 1877—continued.

PERIASAMI . . . I. L. R., 10 Mad., 103

35. — Act XXIV of 1839, applicable to Council, XXIV of 1839 passed by the Agent to the

36. — Madras Rent Recovery Act (Mad Act VIII of 1865), ss 18 and 69—Deduction of time occupied in obtaining copy of

occupied in procuring a copy of the judgment

appeal was barred by limitation KUMARA AKKAPPA NAYANAM v SITHALA NAIDU [I. L. R., 20 Mad., 470]

37. — and art 154—Appeal by prisoner—Limitation—Time necessary to obtain copy of judgment—in computing the period

38. — Computation of limitation—Act XIV of 1859, s 1, cl 6—In computing the period of limitation under cl 6, s 1 of Act XIV of 1859, the day on which the award was passed was to be excluded RUMONEE SOONDERY BOSSIA v PUNCHARUN BOSE 4 W. R., 105

s. 13 (1871, s 14; 1859, s. 13) Ignorance of defendant's residence—Absence from India—Ignorance of defendant's residence does not fall within any of the provisions of the Limitation Act, extending the periods of limitation prescribed by that Act. But under s. 13 plaintiff is entitled to exclude from

LIMITATION ACT, 1877—continued.

The plaintiff instituted a suit under the old law (Bengal Regulation III of 1793), and was non-suited on appeal, because the plaint was defective in not stating the boundaries of the land claimed. While the appeal was pending, Act XIV of 1859 came into operation. He instituted a fresh suit, and claimed to deduct the time occupied in prosecuting the former suit and appeal under the provisions of Act XIV of 1859, s. 14. *Held* (by the majority of the Court) that the plaintiff was non-suited owing to his negligence, and the time sought to be deducted from the period of limitation could not be allowed. *Per* LOCK and PRISER, J.J.—Under the circumstances, the time should be deducted in computing the period of limitation. **CHUNDER MADHUN CHUCKERBUTTY v. RAM COOMAR CHOWDHURY**

[B. L. R., Sup. Vol., 553
6 W. R., 184

The former proceeding must have been taken by the plaintiff or some one through whom he claims (see the definition of "plaintiff" in s. 3 of the Act), and this was the time under the former Act. **BARODAKANT ROY v. SOKMOY MOOKERJEE** 1 W. R., 29

MORRIS v. SAMBAMURTHI RAYAN 6 Mad., 122

7. *Suit bonâ fide brought in Court without jurisdiction.*—The time for which suits may have been pending in Courts which had not jurisdiction should be deducted in computing the period of limitation if the Judge should find that the suits were prosecuted *bonâ fide* and with due diligence. **NONO COOMER CHUCKERBUTTY v. KOLASCHENDER BAROEN** 17 W. R., 518

8. *Deduction of time former suit was being prosecuted.*—The plaintiffs sued the son of a deceased debtor without ascertaining whether or not he was of age, and then, when the plaint was returned to them, they sued the minor's mother, also without ascertaining whether she was legally constituted guardian of the minor. The lower Courts determined the suit, but the High Court was unable to support their decrees in consequence of the defect, which came to light in special appeal. The plaintiffs having brought a second suit, it was held that, in computing the period of limitation, they were not entitled, under provisions of s. 15 of Act IX of 1871, to an exclusion of the time occupied by them in prosecuting the first suit. The Court doubted whether, assuming the case fell under the provisions of the section, the plaintiffs could be said, under the circumstances, to have prosecuted the first suit with due diligence and in good faith. **BARAL SINGH v. GAURI** 7 N. W., 284

9. *Execution of decree—Attachment of decree.*—*Held* that, in calculating the period of three years from the date when effectual proceedings had last been taken to keep alive a decree, the period during which the decree had remained under attachment in execution of a decree against the judgment-creditor should be deducted, the decree-holder having been prevented from exercising due diligence. **CHANDI PRASAD NANDI v. RAGHUNATH DHAR** 3 B. L., 52

LIMITATION ACT, 1877—continued.

10. *Application for transmission of decree—Proceedings bonâ fide in Court without jurisdiction.*—On the 2nd Match 1887, S obtained a mortgage-decree against P in the Court of the Munsif of Hajipore. On the 9th September 1887, S applied for execution, and on the 7th November 1887 the mortgaged property was sold by the Hajipore Court. On appeal, on the 2nd September 1890, the High Court set aside the sale on the ground of want of jurisdiction. Thereupon, on the 6th September 1890, S applied to the Hajipore Court to transfer the decree for execution to the Munsif's Court at Muzaffarpur. On the 19th December 1890, S applied for execution to the Muzaffarpur Court. L, who had meanwhile purchased the mortgaged property from P, objected that the application was barred. *Held* that the application was not barred, as the application of the 6th September 1890 was a step in aid of execution, and also as s. 14, para. 3, of the Limitation Act clearly applied to the facts of the case, and under it the decree-holder was entitled to a deduction of all the time occupied in executing the decree in the Court having no jurisdiction, the application having been manifestly made in good faith. **Nilmoney Singh Deo v. Bireswar Banerjee**, 1 L. R., 16 Cal., 744, distinguished. **Latchman Pandeh v. Madan Mohan Shye**, 1 L. R., 6 Cal., 513, referred to. **RAJBULLUDDI SAHAI v. JOY KISHEN PERSHAD alias JOY LAL**

[I. L. R., 20 Cal., 29

11. *Suit on hundi payable at fixed date—Deduction of time former suit prosecuted in Court without jurisdiction.*—On the 14th April 1889, the defendant at Gwalior drew a hundi for Rs. 500 on his firm at Bombay in favour of D, payable forty five days after date. It was subsequently indorsed at Gwalior by D to the plaintiff at Cawnpore, who sent it to the Bank of Bombay at Bombay for collection. It was to become payable on the 1st June 1891, but on the 23rd April 1889 the Bank presented it to the defendant's firm at Bombay for acceptance, which was refused. The Bank thereupon returned it to the plaintiff at Cawnpore, and it was never presented for payment. On the 16th June 1891, the plaintiff filed a suit upon the hundi against the defendant at Cawnpore, but on the 18th March 1893 the plaint was returned to him, the Court holding that it had no jurisdiction. On the 16th April 1893, the plaintiff filed this suit in the High Court of Bombay. The defendant contended that the suit was barred by limitation. *Held* that the suit was not barred by limitation, the plaintiff being entitled to the benefit of s. 14 of the Limitation Act (XV of 1877). **RAM RAVJI JAMBHEKAR v. PRADHADDAS SUBKARN** 1 L. R., 20 Bom., 133

12. *Ineffectual appeal proceedings.*—When a person appealed from an award of a Collector under Act XIII of 1848, which appeal was struck off for default of prosecution, and he then sued to set aside the award, *Held* that the proceeding had not been prosecuted with due diligence, and that limitation commenced to run from the date of the award, and not from the date of the order in the

LIMITATION ACT, 1877—continued

Nor to its amending Act for the North West Provinces (Act XIV of 1863) *NOVAI DHOMEN DASS* 5 N. W, 30

It was also held not applicable to s 42 of Bombay Act VII of 1867 *HARI RAMCHANDRA & VISHNU KRISHNAJI* 10 Bom., 204

1. *Computation of period of limitation—Suit for arrears of rent—Act I of 1877*

2. *Appeal—Suit—Computation of time for appeal—S 14 of the Limitation Act does not apply to the computation of time for appeals, but only to suits* *ARDHA CHANDRA RAI CHOWDURY & MATANGINI DASSI*

[L. L. R., 23 Cal., 325]

3. *Application to*

brought in the Court of the District Judge of Belgaum on 20th January 1882 and was subsequently presented on the same day in the Court of the Sub-

in computing the period of the months prescribed by the Bombay District Municipal Act (Bombay Act VI of 1873) s 86 *Golipchand Noolkha & Krishna Chander* I L R., 5 Cal., 314 *Aya Butoola & Wazir Ali*, I L R., 8 Cal., 910 and *Khetter Mohun Chuckerbutty & Dinabashy Shah*,

4. *Special limitation under Acts other than the Limitation Act—Suit under Registration Act (III of 1877), s 77 S 14 of the Limitation Act provides for cases in which a*

BUTTY & DINABASHY SHAHA

[I L R., 10 Cal., 285]

SHRO NARAIN & JOOGUL KISHEN RAM

[7 W. R., 327]

KRISHNA CHETTY & RAMI CHETTY 8 Mad., 99

LIMITATION ACT, 1877—continued

NARAY APPA AIYAN & NANNA AMMAT alias PARVATHI AMMAL 8 Mad., 97

MAHALAKSHMI AMMAL & LAKSHMI AMMAL [8 Mad., 105]

JIWAI SINGH & SARVAM SINGH [I L R., 1 All., 97]

TINAL KUMAR & ABRAHAM RAI [I L R., 1 All., 254]

DHONESUR KOOR & ROY GOODER SAHOY [I L R., 2 Cal., 338]

WOOMACHURN MITTER & MOHAMMOY WOOMACHURN MITTER & BEJOY KISHOIF ROY [W. R., 1864, 130]

BANER KANT GHOSE & HARAN KISTO GHOSE [24 W. R., 405]

GIRIDHARA DASS MANAKJI TADANATH BIRJI MOHONDOS & SURANNI LAKSHMI VENKAMA ROW CALAPATAPU KRISTNATH & LAKSHI VENKAMA ROW 5 Mad., 93

Contra PROMOTHOWATH ROY BANADORE & WATSON & Co 24 W. R., 303

But s 14 of Act XV of 1877 now expressly applies to applications of any sort

5. *Decree passed by Mamlatdar in possessory suit—Execution of decree stays l by proceedings in Subordinate Judge's Court—Suit in Subordinate Judge's Court ultimately dismissed—Subsequent application to Mamlatdar for execution of decree—Jurisdiction of Mamlatdar to grant order for execution—Delay in time spent on proceedings in second suit—A Mamlatdar having in a possessory suit passed a decree*

injunction them in this suit the Mamlatdar

subsequently dismissed by the subordinate Judge, whose decree was ultimately confirmed by the High Court in second appeal. The applicant then applied to the Mamlatdar for the execution of his decree in the possessory suit. The Mamlatdar rejected the application on the ground that that decree of the High Court in the civil suit prevented him from executing his decree. Held that the applicant was entitled to obtain from the Mamlatdar an order for the execution of his decree unless it was barred by limitation. It was not barred inasmuch as in computing the period of limitation allowance was to be made for the time during which the decree remained in the civil suit. (XV of Hira Lal L. R., 7 AMICHIAN)

6. *Deduction of time occupied by former suit under old law of limitation.*

LIMITATION ACT, 1877—continued.

against *Saud J* and *R* to recover the amount of the deposit, and obtained a decree, but the decision was reversed on appeal, and the suit dismissed for want of jurisdiction. On 6th June 1869 *K* filed his plaint in the proper Court. *Held* that, whether the period of three years under s. 1, cl. 9, of Act XIV of 1859, or of six years as provided by cl. 16, s. 1 of that Act, be the limitation applicable to such a suit, the suit was not barred, inasmuch as *K* was entitled to deduct the time during which he was *bona fide* prosecuting with due diligence a suit for the same purpose in a Court not having jurisdiction. **LUCKHISARAIN MITTAR v. KETIKO PAL SINGH ROY** [13 B. L. R., P. C., 148; 20 W. R., 380; 24 W. R., 407 note]

Affirming decision of lower Court in **KHETTER PAUL SINGH v. LUCKHISARAIN MITTAR** [15 W. R., 125]

20. ————— *Deduction of time suit was being prosecuted in another Court.*—A suit for arrears of rent was brought by the plaintiff in the Revenue Court, but it was held that there being no actual contract between the plaintiff and defendant, and the defendant's liability arising out of equitable considerations with which the Collector's Court could not deal, that Court had no jurisdiction to decide it. In a subsequent suit in the Civil Court, *Held* the plaintiff was, under s. 14, Act XIV of 1859, entitled to a deduction of the time he was prosecuting his claim in the Revenue Court. **PROSONNOCOMAR PAL CHOWDHURY v. MEDDER MOHUN PAL CHOWDHURY** [11 B. L. R., Ap., 31 note]

21. ————— *Deduction of time suit was being prosecuted in another Court.*—Where a part-proprietor of a talukh, who was also co-sharer in a fractional portion thereof, brought suits in the Revenue Courts against his co-talukhdars for arrears of rent without allowing any deduction on account of his share, which suits were dismissed for want of jurisdiction, *Held*, in a subsequent suit in the Civil Court for the rent for the same period, that the plaintiff was entitled, under s. 14, Act XIV of 1859, to a deduction of the time during which he was prosecuting his suit in the Revenue Court. **GOBINDO COOMAR CHOWDHURY v. MANSON** [15 B. L. R., 58; 23 W. R., 152]

22. ————— *Dismissal of former suit for want of any cause of action.*—Where a former suit was dismissed on the ground that as framed no cause of action was shown against the defendant, *Held* that the time occupied in prosecuting the former suit could not be excluded when computing the period of limitation. Though the plaintiffs had acted with due diligence in instituting their former suit, it was dismissed, not on any technical ground of misjoinder of parties or of causes of action, but on the substantive ground that, having regard to the frame of the suit, no cause of action had been established against any of the defendants; and the suit was not one which the Court, from defect of jurisdiction or other cause of a like nature, was unable to entertain. **COMMERCIAL BANK OF INDIA v. ALLAOODDEEN SAHEB** . I. L. R., 23 Mad., 583

LIMITATION ACT, 1877—continued.

23. ————— *Defect of jurisdiction, "of other cause of a like nature"—Misjoinder or causes of action—Deduction of time occupied by former suit wrongly instituted.*—A Hindu widow alienated certain property belonging to the estate left by her husband, a moiety of it in favour of one party and a moiety in favour of another, and died on the 22nd June 1878. The reversionary heirs sold a share of the property, and the purchaser brought a suit for recovery of the property alienated by the widow on the 25th April 1890, making the reversionary heirs defendants. On the 19th June 1890, the reversionary heirs were added as co-plaintiffs, and the suit was dismissed on the ground of misjoinder of causes of action on the 19th February 1891. The present suit was then brought for one moiety only of the property on the 23rd February 1891, and deduction of the time taken up by the previous proceeding was claimed. *Held* that, when a suit is instituted upon distinct causes of action against different sets of defendants severally, the Court may fairly be said to be "unable to entertain it" from a cause of a "like nature" with defect of jurisdiction. *Held* also that s. 14 of the Limitation Act (XV of 1877) applied to this case, and that the plaintiffs were entitled to deduct the time during which they were prosecuting the former suit, and the present suit was not barred by limitation. **MULLICK KEFAIT HOSSEIN v. SHEO PRESHAD SINGH** . I. L. R., 23 Cal., 821

24. ————— *Exclusion of time of former suit without jurisdiction.*—In 1893 a suit was instituted in the Presidency Court of Small Causes against defendants not resident within the jurisdiction, the leave of the Registrar of the Court having been first obtained. Subsequently it was ruled that the Registrar was not empowered to give such leave, and the suit was dismissed. A similar suit was then instituted, the leave of the Court having been first obtained. *Held* that the time during which the first suit was pending should be deducted in the computation of the period of limitation applicable to the second suit. **SUBBARAO NAYUDU v. YAGANA PANTULU** . I. L. R., 19 Mad., 90.

25. ————— *Cause of like nature—Misjoinder of causes of action—Want of leave under Civil Procedure Code, s. 44.*—In March 1891, the plaintiff sued the defendant to recover the sum of money due on the taking of an account between the plaintiff and the defendant, who was his agent, and to recover possession of certain land. The plaintiff did not obtain leave under the Civil Procedure Code, s. 44, for the institution of this suit, which was accordingly dismissed for misjoinder of causes of action. The plaintiff now instituted, on the 5th April 1893, two suits, the one for the money and the other for the land. *Held* that the plaintiff was entitled, under the Limitation Act, s. 14, to have the time occupied in the previous proceedings deducted in the computation of the period of limitation applicable to his suit for money, which accordingly was not barred by limitation. **VENKATI NAYAK v. MURUGAPPA CHETTI** . I. L. R., 20 Mad., 48.

26. ————— *Suit instituted in wrong Court—Bona fide mistake of law.*—S. 14 of the

LIMITATION ACT, 1877—continued

ineffectual appeal proceedings **GHOLAM DARBESH-CHOWDHRY v SHAM KISHORE ROY**

[W. R., 1864, 378]

13 ———— *Due diligence—Non-production of Collector's certificate*—The plaintiff brought in 1876 a suit against the defendant in respect of the same cause of action as the present suit.

ground. *Held*, in the subsequent suit, that the non production of the Collector's certificate does not necessarily constitute such a want of due diligence on the plaintiff's part as to disentitle him to the deduction of time allowed by s 14 of the Limitation Act (XV of 1877) **POTALI MEHETI v TELJA**

[I L R., 3 Bom, 223]

14. ———— *Court having no jurisdiction*—A deduction of the time a former suit was pending from the period of limitation can only be claimed under s 14 when the Court before whom the former suit was brought had no jurisdiction and where there has been no adjudication. **MUND DOOLAL SIRCAR v DWARKANATH BISWAS** 2 W. R., 9

KALEE CHUNDER CHOWDHRY v BUTTLIN GOPAL BHADOOREE 2 W. R., 119, 1

15 ———— *Deduction of time former*

THEERTHA PILLAY

6 Mad, 45

16 ———— *Deduction of time proceedings are prosecuted in Court the order of which is afterwards set aside*—A period during which a party to a suit is engaged in prosecuting a claim for *wasalat* counts towards limitation if the

17 ———— *Deduction of time claim was being prosecuted in another Court*—To meet a plea of limitation a judgment-debtor was held by him according to the order of the Court. **NDEE ROY v MOON**

[23 W. R., 274]

18 ———— *and arts 20, 40—Time occupied in prosecuting suit in another Court—Dismissal of suit through defect of jurisdiction or other cause of like nature—Court unable to entertain suit because it was conceded*—Defendants having attached certain goods on 12th June 1893, in execution of a decree obtained by them against

LIMITATION ACT, 1877—continued

M, a claim was preferred by plaintiff on 19th June 1893 and disallowed. Plaintiff thereupon brought a declaratory suit on 2nd August 1895 in the City Civil Court Madras, and obtained an injunction to stop the sale of the goods which however, was

1897, plaintiff brought a suit in the Court of Small Causes, Madras to recover from the defendants the goods or their value which was dismissed on 2nd

Madras and claimed that the cause of action had arisen on 7th February 1893 the date on which plaintiff's right to the specific moveable property had been finally declared. He also claimed that the time occupied in the proceedings in the Court of Small Causes should be deducted under s 14 of the Limitation Act. *Held* that the suit was barred and that plaintiff was not entitled to have the time spent in prosecuting the previous suit cause suit deducted from the period of limitation. That suit had been dismissed, not because the Court through defect of jurisdiction or other cause of a like nature was unable to entertain it but because it was misconceived. **MURUGESA MUGALIAR v JATTARAM DAVE**

[I L R., 23 Mad, 621]

19 ———— *Deduction of time suit was being prosecuted in another Court*—*L and R* the

The lease contained no stipulation for the registration of any vendee or donee. In 1870 K sold the darpatni lease to A the deed of sale which was duly registered providing for mutation of names in the patniar's books. No such mutation was ever effected by K, who was never recognised as their tenant by L and R, the rent of the darpatni being paid in the name of S. In 1884 the rent due from the patnidars being in arrear the zamindar proceeded to sell the patni under Regulation VIII of 1819. Thereupon A, in order to protect his under tenure, deposited in the Collectorate on 17th November 1884 a sum of money on which the sale was stayed. A, being then in arrear in the payment of his darpatni rent claimed to set off the amount deposited. **L and R**

brought suit K intervened claiming the benefit of the set off, to which, however the High Court on 26th June 1895, or appeal held that he was not entitled, the deposit being merely a voluntary payment by K. On 30th October 1897, A brought a regular suit

LIMITATION ACT, 1877—continued.

has not the power of the Court, under s. 311 of the Civil Procedure Code, to set aside a sale. **NARAYAN v. RASULKHAN** . I. L. R., 23 Bom., 531

30. ————— *Deduction of time suit was being prosecuted in another Court.*—The plaintiff sued under Act X of 1859 in the Revenue Court to recover her share of certain arrears of rent due from the defendants on a kabuliati executed by them in favour of the plaintiff's mother, but her suit, on the objection by the defendants that her co-sharer was not a party, was dismissed by the Collector, and his decision was upheld by the High Court on appeal on 3rd July 1861. The plaintiff then brought a fresh suit under Act X of 1859, making her co-sharer a party defendant, but the suit was again dismissed, and the dismissal upheld by the High Court on 14th April 1870 on the ground that the plaintiff's share was not her own, and therefore the Collector's Court had no jurisdiction to determine any question of right as between her and her co-sharer. In a suit brought in the Civil Court on 31st May 1870 for a moiety of the rents from 1861 to 1869, —Held it was not a suit for an arrear of rent as that term is defined in s. 21, Bengal Act VIII of 1860, and s. 29 of that Act would not apply. The limitation applicable was that provided by Act XIV of 1859, under s. 14 of which Act the plaintiff was entitled to deduct the time during which she was *bona fide* prosecuting her claim in the Revenue Courts. **HARIS CHANDRA DUTT v. JAGADAMBA DAS**

[8 B. L. R., 190 note: 16 W. R., 61

31. ————— *Certificate granted by Collector under the Public Demands Recovery Act, Suit to set aside.*—Where rent was payable jointly to certain wards of Court, and another proprietor, whose guardianship under the Court of Wards had ceased, and the Collector issued a certificate, under Bengal Act VII of 1880, for a proportionate share of the rent due to the wards, in a suit to set the certificate aside as invalid, the plaintiff was allowed, under s. 14 of the Limitation Act, to deduct the period during which he was *bona fide* seeking redress from the Revenue authorities, who had no jurisdiction to deal with the question raised by him, and the suit was held to be not barred by lapse of time. **GIRJANATH ROY CHOWDHRY v. RAM NARAIN DAS**

[I. L. R., 20 Calc., 264

32. ————— *Deduction of time plaintiff was prosecuting another suit.*—Plaintiff as payee of an order drawn by defendant at Ahmedabad, where he (defendant) resided, on a firm at Bankok in Siam, and dishonoured on presentation, sued defendant and an agent of the Bankok firm who resided at Surat in the Subordinate Judge's Court at Surat. Permission to proceed with the suit against the defendant (the drawer) having been refused by the High Court, plaintiff withdrew his plaint and filed his suit in the Court at Ahmedabad against the drawer alone. The Subordinate Judge rejected the claim as barred by limitation. Held by the High Court in appeal that under s. 15 of the Limitation Act (IX of 1871) a deduction might properly be made of the time during which the suit was pending in the Court at Surat, and that the deduction of this account

LIMITATION ACT, 1877—continued.

was to run from the filing of the plaint to the final refusal of the High Court to allow the suit to proceed at Surat against the drawer (defendant). **SHETH KAHANDAS NARANDAS v. DAHIABHAI**

[I. L. R., 3 Bom., 182

33. ————— *Summary decree—Calculation of period of limitation.*—A plaintiff is not bound to sue to enforce a summary decree against the immoveable property of the defendant pending a regular suit brought by the defendant in the Civil Court to set aside the summary decree. Limitation will count not from the date of the summary decree, but from the date at which the suit, brought in the nature of an appeal to set aside that decree, is determined. **GYAN CHUNDRA ROY CHOWDHRY v. KALEE CHURN ROY CHOWDHRY** . 7 W. R., 43

34. ————— *Deduction from period of limitation of time during which former suit was pending—Application for execution of decrees.*—In computing the period of limitation, for a suit to set aside a summary order, the time during which the judgment-creditor was prosecuting another suit to obtain a reversal of the order dismissing his application for execution of decree and for attachment of the property of the judgment-debtor cannot be deducted. **KRISHNA CHETTY v. RAMI CHETTY**

[8 Mad., 93

35. ————— *Computation of period of limitation—Exclusion of time while prosecuting suit in Court without jurisdiction.*—On the 26th August 1878 R and B joined in instituting a suit in the Court of the Subordinate Judge, the period of limitation of which expired on the 21st September 1878. This suit was transferred to the District Court, which on the 16th September 1878 returned the plaint to the plaintiffs on the ground that they should have sued separately. On the 23rd September 1878 R presented a fresh plaint to the District Court, which, on the 1st October 1878, made an order rejecting it, on the ground that he should have instituted the suit in the Court of the Subordinate Judge. R appealed from this order to the High Court, which affirmed it on the 28th January 1879, but observed that the plaint should be returned to R. On the 10th April 1879 R's plaint was returned to him, and on the same day he presented it to the Subordinate Judge. Held that, in computing the period of limitation, R could not claim to exclude any other period than from the 23rd September 1878 to the 10th April 1879, for from the 26th August 1878 to the 16th September 1878 he was prosecuting his suit in a Court which had jurisdiction, and the inability of that Court to entertain it did not arise from defect of jurisdiction or any cause of the like nature, but from misjoinder of plaintiffs—a defect for which he must be held responsible; and from the 16th to the 23rd September he was not prosecuting his suit in any Court, and could not claim to have that period excluded. **RAM SUBHAG DAS v. GOBIND PRASAD** . I. L. R., 2 All., 622

36. ————— *Exclusion of time former suit was being prosecuted.*—"Other cause of a like nature."—The words "other cause of a like nature"

LIMITATION ACT, 1877—continued

Limitation Act, 1877, applies to a case where a plaintiff has been prosecuting his suit in a wrong Court in consequence of a *bona fide* mistake of law *Sitarum Paraj, v Nimba, I L R, 22 Bom, 320, Huro Chunder Roy v Surmanoy, I L R, 13 Cal 108*

27. ———— Bona fide mistake of law

—Rejection of appeal on ground of limitation— That a *bona fide* mistake of law upon a doubtful point of jurisdiction of procedure as much entitles a person to the benefit of s 14 of the Limitation Act as a *bona fide* mistake of fact *Brj Mohan Das v Mannu Bibi, I L R 19 All 348* referred to Where a sale under Act VII of 1880 was confirmed on the 28th sioner was was subseq aside the

(BANERJEE and PRATT, JJ, in referring the case to a full Bench) that the mere fact of the Commissioner having rejected the appeal on the ground of limitation is not sufficient to disentitle the plaintiff to the deduction of time under s 14 of the Limitation Act during which that appeal was pending But it is for the Court, before which the question whether this suit is barred by limitation is raised, to determine whether the appeal was really out of time or failed from defect of jurisdiction or other cause of a like nature The appeal to the Commissioner being in this case clearly out of time, it was held by the Court that the appeal had failed for reasons other than "defect of jurisdiction or other cause of a like nature" and was accordingly outside the scope of s 14 of the Limitation Act *BISHAMBHAR HALDAR v BOWANALI HALDAR 3 C. W. N, 233*

28. ———— Exclusion of time of proceeding bona fide in Court without jurisdiction— *Misjoinder of causes of action—"Cause of a like nature"*—Two suits were brought for partition of the property of a deceased by his heirs under the Malomedan Law—the first, by his widow and six children

LIMITATION ACT, 1877—continued

were at first treated at the Munsif's Court as being duly stamped, though payment of fresh Court fees was subsequently ordered after the expiration of the period of limitation The deceased had died in 1882, the two original suits had been filed in 1893 and 1894, respectively—within twelve years of his death, and the two amended suits and the seven fresh plaints had been filed in December 1894, more than twelve years from his death Held (on the question of limitation) that the suits by the two children of the first wife were not barred, as they should be treated as a continuation of their original joint claim, which had been instituted in the same Court before the period of limitation had expired That where there has been a misjoinder which has precluded a Court from entertaining a suit the period during which such suit has been prosecuted diligently and in good faith may be deducted in computing the period of limitation the inability of the Court to entertain a suit combining causes of action which could not be combined, being covered by the words "from other cause of a like nature"—in s 14 of the Limitation Act That with reference to the widow's amended suit, inasmuch as her original suit (on behalf of herself and her six children) had been filed before the

That for similar reasons a like deduction should be made in favour of the six first suits of her children (unless a contrary decision were necessitated by the fact that their plaints had remained unstamped until after the expiration of the extended period of limitation) *ASSAN v PATHUMMA*

[I L R, 22 Mad, 494]

29. ———— Execution by Collector— *Application to Collector to set aside sale—Civil Procedure Code (Act XIV of 1882) as 214 310A, 311, and 320*—A decree passed against the applicant N was transferred for execution to the Collector under s 320 of the Civil Procedure Code (Act XIV of 1882) On the 8th May 1897 the Collector in execution sold certain property belonging to the applicant, which was purchased by the respondents

cedure Code He contended that, under s 14 of the

LIMITATION ACT, 1877—continued.

Act IX of 1871, s. 15, the plaintiff was entitled to exclude the time during which he had been prosecuting the suit in the regular Court up to the date of the lower Appellate Court's judgment, but not the time during which he waited to get the plaint back.

ANNAIA CHENNAI CHETTIYAR v. GOVIND MOHUN DUTT 24 W. R. 26

40. *Suit not against same defendants.*—A former suit brought, not against the same defendants, but only against one of them, did not fall within s. 14, Act XIV of 1859; consequently the time of its pendency could not be deducted in computing limitation in a subsequent suit. *NILNADHUN SURNOKAR v. KUNTO DOSS SURNOKAR*
[5 W. R. 281]

47. *Deduction of time suit not being prosecuted in another Court.*—The question whether the plaintiff is entitled, in computing the period of limitation, to deduct the time occupied in prosecuting a former suit, depends in the first place upon the question whether the former suit was brought upon the same cause of action as the new suit. Where the plaintiff brought two suits, one against one branch of the family and the other against another branch, to recover a share of that portion of the property which was in the possession of each, and these suits were rejected on the ground of their having been improperly brought, it was held that in bringing a consolidated suit against all sharers for a general partition the plaintiff was not entitled to deduct the time occupied in prosecuting his former suits. *JOHARAM BECHAR v. BAI GANGA*
[8 Bom., A. C., 228]

43. *Deduction of period appeal was pending.*—Where a suit is brought and dismissed for want of jurisdiction, and an appeal is preferred in which the first decree is affirmed, if a suit be afterwards brought in the right Court, the period which elapsed between the decision of the first Court and the disposal of the appeal should be excluded in computing the period of limitation prescribed by Act XIV of 1859. **RAJ KISTO ROY v. DEER CHUNDER JOORNA** . . . **6 W. R., 308**

44. *— Deduction of time suit was pending in wrong Court.*—Where a suit, prosecuted *bona fide* and with due diligence, was dismissed in appeal for want of jurisdiction in the Court of first instance, and a second suit was afterwards brought in a right Court.—*Held* that, in computing under s. 14 of Act XIV of 1859 the period of limitation of the suit, the time between the decree of the Court of first instance and the institution of the appeal should be excluded. *AJODHYA PERSHAD v. BISHUNSHER SAHAI* 6 N. W., 141

45. ————— *Deduction of time—Prosecution of suit in another Court.*—A bond-suit was filed in a Munsif's Court on the day on which the Court re-opened after the Dusserah vacation, during which the period of limitation expired as regards the payment of the loan-debt. The Munsif decreed the suit; but the Subordinate Judge in appeal found that the Munsif had no jurisdiction, and ordered him to return the plaint. This was done, and the plaint was filed in the Small Cause Court on the same day. The defendants pleaded limitation. *Held that, under*

48. *Deduction of time suit is being prosecuted in Court without jurisdiction.*— Under a decree made in a suit brought by *A* against *B*, *A* obtained possession of certain property. The decree was reversed on appeal, but no order was made by the Appellate Court with regard to mesne profits. After such reversal, *B* applied to and obtained an order from the Court of first instance for possession and mesne profits. This order, so far as it awarded mesne profits, was set aside by the High Court as being an order he had no power to make, no right to mesne profits having been declared by the Appellate Court, and as being made "altogether without jurisdiction;" they held that *B* should have applied to the Appellate Court which reversed the decree, or should have brought a separate suit for the mesne profits. An application for review of this judgment being rejected, *B* instituted a suit for such mesne profits. *Held per* PEACOCK, C.J., KEMP and MACPHERSON, J.J. (LOCH, J., dissenting), that in the proceedings taken by *B* in the former suit to obtain the mesne profits she was engaged in prosecuting a suit upon the same cause of action against the same defendant within the meaning of s. 14, Act XIV of 1859. **HURRO CHUNDER ROY CHOWDHRY v. SOORADHONEE DEBIA**

[B. L. R., Sup. Vol., 985: 9 W. R., 402

49. ————— *Presentation of plaint in wrong Court—Madras Boundary Act, s. 25.*—In 1883 a plaint, by way of appeal from a decision

LIMITATION ACT, 1877—continued

in s 14 of the Limitation Act (XV of 1877) mean some cause analogous to defect of jurisdiction. Where a suit was dismissed on the ground that the debt sued for was due not to the plaintiff alone but to the plaintiff and his partner, the latter not having been joined in the suit, and where the plaintiff subsequently brought a fresh suit for the

6 W R, 181 referred to *Deo Prasad Singh v Pertab Kaur*, I L R, 10 Cal 86 not followed *Jema v Ahmad Ali Khan* I L R, 12 All, 207

filed a suit against the defendant in a District Munsif's Court to recover his share of the profits under the agreement. In his evidence the plaintiff stated that there had been a settlement of the accounts between himself and defendant. The suit was thereupon dismissed as being cognizable by the Court of Small Causes and the plaint was returned on the 1st March 1889. On the 27th the plaint was filed in the Court of Small Causes an addition having been made to it. The Court held that the addition was irregular and on the 19th November permitted the plaintiff to withdraw his suit with permission to bring a fresh one. He accordingly instituted the present suit on 6th December 1889. Held that in computing the period of limitation the period from 2nd September 1887 to 1st March 1889 should be deducted under Limitation Act s 4. *SANINADHA v SANBAN* [I L R, 16 Mad, 274]

38 Deduction of time suit was being prosecuted in another Court—Where a plaintiff brought a suit in the Munsif's Court, and it was found that the suit had been improperly valued and that the Munsif had no jurisdiction to try it and the Munsif returned the plaint in order that the suit

Contra *SHAM KANT BANERJEE v GOPAL LAL FAGORE* 1 W R, 228

39 Deduction of time

LIMITATION ACT, 1877—continued

Held that, in computing the period of limitation prescribed for the suit, the time during which the plaint was on the file of the Subordinate Judge's Court must be deducted. *Omoo Churn Nundr v Bhairathamoyi Dossie* I L R, 7 Cal, 284

40 Deduction of time occur

VIII of 1859 were thereupon instituted against the defendant, and the defendant's claim was upheld by an order passed on the 7th November 1872. In the meantime the plaintiff's husband having died, plaintiff filed on the 31st March 1873, a regular suit to establish her title. On the 8th July 1873 she obtained a second certificate and registered it. The Court of first instance awarded her claim, but on appeal by the defendant the lower Appellate Court reversed that decree, on the ground that, at the institution of the suit plaintiff had not a registered certificate of sale. That decree was confirmed on the 17th November 1879, on second appeal, by the High Court. On the 20th April 1880 plaintiff brought this suit on the strength of her second certificate. The Court of first instance allowed her claim. The defendant appealed, and the lower Appellate Court held her suit not maintainable on appeal by plaintiff to the High Court. Her suit was barred. The plaintiff was not entitled to a deduction of the time during which she was unsuccessfully prosecuting the former suit, on account of her inability to produce a registered certificate, was not a 'cause of a like nature' to that of limitation within s 14 of Act XV of 1877. *JAMNA v BAI ICHHA* I L R, 10 Bom, 601

41 Deduction of time

plaintiff's Oath—Oath of plaintiff in another Court—Where a plaintiff brought a suit in the Munsif's Court, and it was found that the suit had been improperly valued and that the Munsif had no jurisdiction to try it and the Munsif returned the plaint in order that the suit

LIMITATION ACT, 1877—continued.

in support, he has first of all to prove that he has collected rents from the lands in suit within twelve years of the suit; and in calculating the period of limitation, the plaintiff is not entitled to deduction on account of the periods of pendency of suits for rent and for small portions for the land, they not being suits for the same cause of action. **PRODHAN GOPAL SINGH v. BHOOR ROY OJHA** . . .

[10 W. R., 570]

59. — *Deduction of time suit is pending and other effect of jurisdiction.*—When limitation is pleaded, a plaintiff was not entitled, under s. 14, Act XIV of 1859, to deduction for the time of the pendency of a suit brought by defendants upon the same cause of action, if it was not a suit in which the Courts were unable to decide the question from defect of jurisdiction or other such cause. **GOBOY-POKSI BHOW v. BHOWSINGH DEB** . . . **8 W. R., 455**

57. — *Deduction of time suit is pending in a suit by an executrix, to recover, under deeds of mortgage and sale, dated, respectively, October 1857 and April 1860, executed to the testator by first defendant's deceased husband, certain villages which first defendant in 1848 and 1851 mortgaged to second and third defendants; the defendants pleaded that the suit was barred by lapse of time.* For the plaintiff it was contended that the operation of the Limitation Act was suspended from 1844 until 1867, by reason of the pendency of an equity suit, commenced by bill filed by the present first defendant against the testator, to set aside the deeds of October 1857 and April 1860, which bill was dismissed by consent in June 1867. *Held* (reversing the decision of the lower Court) that these proceedings had no such effect; that the plaintiff might have brought a suit for judgment at any time; and that the present suit was barred. **TRANQUIBAR SAMI AYYAN v. NATHANMURU ANNAL ANNAL** . . . **6 Mad., 234**

58. — *Deduction of time during which force of suit for rent was pending which was dismissed for want of jurisdiction.*—In suits by the Receiver of the Tanjore estate to recover rent due under muchalkas executed by defendants, the mirasidars of certain villages, agreeing to take the villages on rent for five Paddis, from 1273 to 1277, at an annual rent, the defendants pleaded limitation as to part of the rent claimed. The plaintiff claimed to be entitled to the advantage of s. 14 of that Act, because he was for a time prosecuting suits against defendants separately for the arrears of rents alleged to be barred, all which suits were dismissed on the ground that plaintiff could not sue the defendants separately while they had executed the muchalka jointly. The District Judge found for the defendant on the questions on the Act of Limitations. *Held*, on appeal, that the period of limitation applicable to a suit for rent was three years (under Act XIV of 1859), and that, as to the claim to the exception under s. 14, it failed at every turn. The cause of action was not the same, for there the obligation sued upon was several, here it is joint; and the Court which decided the former suits not only did not fail to decide them, but did decide them. **MORRIS v. SIVARAMAYYAN** . . . **7 Mad., 242**

LIMITATION ACT, 1877—continued.

59. — *Deduction of time former suit was pending.*—Where a plaintiff sues upon his joint title, having previously instituted a suit in which he unsuccessfully set up his kanam right, the latter suit cannot avail to prevent the Statute of Limitations from running against him. **PARAKUT ASSEN CUTTY v. EDAPALLY CHENNEE** . . .

[2 Mad., 268]

60. — *Meaning of "suit"—Appeal forbidden by law—Good faith.*—*Held* that the word "suit" used in s. 14, Act XIV of 1859, had only one, and that the common and ordinary sense of the term. *Held*, further, that the plaintiff, in preferring an appeal from a summary order, which appeal was expressly forbidden by law, could not be considered to have been prosecuting a suit within the meaning of s. 14, and was therefore not entitled to the indulgence given by the aforesaid section, even assuming that section to be applicable to suits to contest the order under s. 246, Act VIII of 1859. **PETTER RAM v. MONOHAR LALL** . . . **3 Agra, 3**

61. — *Deduction of time for appeal from order under s. 246, Civil Procedure Code, 1859.*—An unsuccessful claimant, instead of bringing a regular suit to establish his right as provided by s. 246, Act VIII of 1859, chose to file an appeal against the order rejecting his claim. His appeal, though successful before the lower Appellate Court, having been thrown out in special appeal, as illegal under the section above cited, he sued to set aside the order rejecting his claim. *Held* that he was not entitled, under s. 14, Act XIV of 1859, to deduct from the period of limitation the time during which the appeal proceedings were pending. **RAMDASS BABOO v. WATSON** . . . **W. R., 1864, 371**

62. — *Suit brought in wrong Court.*—Where a plaintiff, relying upon the defendant's representation as to the latter's place of residence, brought his suit in a Court which had not jurisdiction, the time of the pendency of the suit in such Court was held to be properly excluded under s. 14, Act XIV of 1859, in computing limitation. **BANEE MADHUB LALHOREE v. BIPRO DASS DEY** . . . **[15 W. R., 69]**

The words "or other cause of a like nature," in s. 14, exclude many of the causes which were held to come within the meaning of the corresponding section of the Act of 1859.

63. — *"Other cause."*—The words "or other cause" in s. 14, Act XIV of 1859, applied to cases where the action of the Court was prevented by causes not arising from laches on the part of the plaintiff,—in other words, by accidental circumstances beyond his control. **LUCHMUN PERSHAD v. NIMHOO PERSHAD** . . . **17 W. R., 266**

RAMAKRISHNACASTRULU v. DARBA LAKSHMI-DEVANMA . . . **1 Mad., 320**

as where the former suit had been dismissed as not having been brought in proper form. **KERAMET HOSSEIN v. GOLAP KOONWAR** . . . **3 W. R., 101**

LIMITATION ACT, 1877—continued

... of the Boundary District Munsif

50. ———— *Proceedings boni fide prosecuted in a Court without jurisdiction—Rent Recovery Act (Mad Act VIII of 1865), s 78—*

tioned date the tenant filed the present suit on the same cause of action. Held the suit was not barred by limitation under the six months' rule in s 78 of the Rent Recovery Act by reason of the provisions of s 14 of the Limitation Act, 1877.

[I L R, 12 Mad, 467]

51. ———— *Execution of time during which former suit was pending—Suit to set aside order—Limitation Act, 1877, art 11—Under a*

when another order was made by the District Judge by which the original decision of the District Munsif was confirmed. Held that under s 14, expiry of

52. ———— *Deduction of time spent in another litigation in respect of the same subject-matter—Mistake of law—A obtained a decree against B as the heir and legal representative of his deceased uncle C. The decree directed*

LIMITATION ACT, 1877—continued

that the amount adjudged should be recovered from C's assets in the hands of B. In execution of this decree, certain property was attached. B claimed this property as his own, and sought to remove the attachment, but the Court passed an order confirming the attachment on the 20th November 1880. In 1881 B filed a regular suit to set aside this order. The suit was dismissed in

53. ———— *Exclusion of time taken up in prosecuting former suit eventually withdrawn—Civil Procedure Code, 1882 s 374.—On the sale of certain thikans in execution of decrees against his father, the plaintiff intervened, and obstructed the auction purchasers in obtaining possession. His obstruction was however, removed by an order of the Court, dated 23rd October 1873. In a suit which was filed in 1883 for partition of the ancestral property and possession of his share—Held that the suit not having been brought within one year from the date of that order as required by the law then in force, the claim was clearly time barred. The plaintiff was not entitled to a deduction of the time taken up in prosecuting a former suit, which was held in 1872 and disposed of in 1883, as that suit did not fail for want of jurisdiction or any defect of a like nature such as is contemplated by s 14 of the Limitation Act (XV of 1877) but was withdrawn by the plaintiff himself for want of parties with liberty to bring a fresh suit. S 34 of the Code of Civil Procedure (Act XIV of 1859) therefore applied to the present case.* KRISHNAJI LAKSHMAN : VITHAL RAVJI RENGE [I L R, 12 Bom, 625]

54. ———— *Appeal preferred to wrong Court through mistake of law—Exclusion of time—S 14 of the Limitation Act (XV of 1877) does not contemplate cases where questions of want of jurisdiction arise from simple ignorance of the law, the facts being fully apparent, but is limited to cases where from bona fide mistake of fact the suitor has*

55. ———— *Set off for rent from alleged small land—Deduction.—Where a plaintiff claims rent on account of lands as small as those of the defendant, who set up a falling title and proved falling title*

[I L R, 10 All, 687]

LIMITATION ACT, 1877—continued.

73. ————— *Deduction of time during which another suit was being tried.*—The defendants cut down and carried away some trees which had been growing on the plaintiff's land. The plaintiff's manager brought a suit in his own name against the defendants for the value of the trees so cut and carried away. The suit was dismissed on the ground that the manager had no cause of action against the defendants. In a subsequent suit brought by the plaintiff against the defendants for the value of the same trees, he contended that the time occupied in the former suit ought to be excluded in computing the period of limitation prescribed for the second suit. *Held* that the provisions of Act XV of 1877, s. 14, did not apply, and that the time could not be excluded, as the reason why the previous suit was dismissed was, because it was brought in the name of the wrong person, not from defect of jurisdiction, or from any cause of a like nature. **RAJENDRO KISHORE SINGH v. BULAKY MAHTON** . I. L. R., 7 Cal., 387

74. ————— *Deduction of time during prosecution of suit with due diligence—Defect of jurisdiction—Cause of like nature.*—On the 2nd of September 1869, a suit was instituted for, among other things, the possession of land claimed under a kobala, dated the 31st October 1867. This suit was dismissed on the ground of misjoinder of causes of action. On the 14th of April 1881, the plaintiff sued for possession of the land only. *Held* that the suit was not barred by limitation, as the plaintiff had, within the meaning of s. 11, been prosecuting his claim in a Court which, from a cause of "like nature" to defect of jurisdiction, was unable to entertain it. **Ram Subhay Das v. Gobind Prasad**, I. L. R., 3 All., 622. **DEO PRASAD SINGH v. PERTAB KAIREE** [I. L. R., 10 Cal., 83; 13 C. L. R., 218]

75. ————— *Exclusion of time of proceeding with suit bonâ fide—Cause of like nature.*—Of six persons in whom was vested the obligee's interest under a hypothecation-bond, three brought a suit upon it in a District Court, and the other three brought a similar suit in a District Munsif's Court to recover, with interest, their respective shares of the sum secured. The former suit was dismissed as not being maintainable, and the latter was withdrawn. The present suit was brought by all six. *Held* that in computing the time within which the plaintiffs had to sue, the time occupied by them in prosecuting the former suits should be deducted. **Deo Prasad Singh v. Pertab Kairee**, I. L. R., 10 Cal., 86, followed. **NARASIMMA v. MUTTAYAN** I. L. R., 13 Mad., 451

76. ————— *Deduction of time during prosecution of suit with due diligence—Defect of jurisdiction—Other cause of a like nature—Misjoinder of causes of action and parties.*—Where a previous suit by the same plaintiff against the same defendant has failed by reason of misjoinder of causes of action and parties, the plaintiff in a second suit is not entitled to the extra period of limitation allowed by s. 14 of the Limitation Act, since the cause of failure of the previous suit is not due to "defect of jurisdiction" in the Court which entertained the suit, nor is it a cause "of a like nature" thereto. **Deo**

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Prosad Singh v. Pertab Kairee, I. L. R., 10 Cal., 86, dissented from. **TIRTHA SAMI v. SESHAGIRI PAI** [I. L. R., 17 Mad., 299]

77. ————— *Multifariousness and misjoinder of parties—"Other cause of a like nature" to defect of jurisdiction—Error in procedure.*—In cases in which s. 14 of the Indian Limitation Act, 1877, is pleaded as protecting the plaintiff from the bar of limitation, if there was an inability in the Court to entertain the former suit produced by any cause not connected in any way with want of good faith or due diligence in the plaintiff, that cause is of like nature to defect of jurisdiction within the meaning of s. 14. It is not necessary that the cause which prevented the former Court from entertaining the suit should be a cause which was independent of, and beyond the control of, the plaintiff. Hence where the inability of the Court to entertain the former suit arose from misjoinder of plaintiffs, and causes of action, and there was on the plaintiff's part in the former suit no want of good faith or due diligence, the plaintiff was held entitled to the benefit of the time during which he was prosecuting the former suit, that is, from the time when the plaint in that suit was filed until the time when it was returned to the plaintiffs for amendment. **Chunder Madhub Chuckerbutty v. Ram Coomar Chowdry**, B. L. R., Sup. Vol., 553; 6 W. R., 184; **Brij Mohan Das v. Mannu Bibi**, I. L. R., 19 All., 318; **Deo Prosad Singh v. Pertab Kairee**, I. L. R., 10 Cal., 86; **Bishambhur Haldar v. Bonomali Haldar**, I. L. R., 26 Cal., 414; **Ram Subhay Das v. Gobind Prasad**, I. L. R., 2 All., 622; **Jema v. Ahmad Ali Khan**, I. L. R., 12 All., 207; **Mullick Kefait Hossein v. Sheo Pershad Singh**, I. L. R., 23 Cal., 821; **Bai Jamna v. Bai Ichha**, I. L. R., 10 Bom., 604; **Narasimma v. Muttayan**, I. L. R., 13 Mad., 451; **Tirtha Sami v. Seshagiri Pai**, I. L. R., 17 Mad., 299; **Subbaray Nayudu v. Yagana Pantulu**, I. L. R., 19 Mad., 90; **Venkitti Nayak v. Murgappa Chetty**, I. L. R., 20 Mad., 48; and **Assan v. Pathumma**, I. L. R., 22 Mod., 494, referred to. **MATHURA SINGH v. BHAWANI SINGH** [I. L. R., 22 All., 248]

78. ————— *Deduction of period—Defect of jurisdiction.*—In a suit for rent in which limitation was pleaded the plaintiffs alleged that, in answer to a former suit brought against them by the defendants, they had bonâ fide claimed to set off the same rent, but that their claim to a set-off had been, on technical grounds, disallowed on appeal, and they contended that, under s. 14 of the Limitation Act, (XV of 1877), they were entitled to exclude the period during which that suit was pending. *Held* that the plaintiff's claim of set-off was not disallowed on account of any defect of jurisdiction nor any defect of a like nature, and that therefore he was not entitled to exclude the period as he contended. **HAFIZUNNESSA KHATUN v. BHIRAB CHUNDER DAS** [13 C. L. R., 214]

79. ————— *Withdrawal of application with leave to renew it—Deduction of time—Civil Procedure Code, 1877, s. 374.*—The rule laid down in s. 374 of the Code of Civil Procedure (Act X

LIMITATION ACT, 1877—continued

64 ————— Other causes of a like

14 W R, 400

65 ————— Other causes of a like
nature—Suit against a wrong party—For litigation
against a wrong party no deduction can be allowed
MUNNA JHUNNA KOOHAR v LALJI ROY

[1 W R, 121]

KAVARJI SOREBJI v BARJORJI SOREBJI

[10 Bom, 224]

67 ————— Deduction of time in suit

KHOOND v MUDDUY MOHUN TEWARKE

[5 W R, 32]

69 ————— Mesne profits—Plaintiff
sued for and recovered possession of land. He after
wards sued for mesne profits. Held per PEACOCK
C J and NORMAN and SETON KERR JJ (dissenting
judges STEER J) that under Regulation III of 1793
s 14 the plaintiff was entitled to recover mesne
profits for twelve years prior to suit excluding from
such computation the period of the pendency of the
suit for possession from the date of the plaintiff's
final decree. ANNADA GOBIND CHOWDHRY v
SWARNAMAYI ABHAY GOBIND CHOWDHRY v
SWARNAMAYI

B. L. R., Sup Vol., 7

S C UNNODA GOBIND CHOWDHRY v SURENOMYER
OBROY GOBIND CHOWDHRY v SURENOMYER

[W R, F B, 163]

70 ————— Deduction of period of

LIMITATION ACT, 1877—continued

regard to mesne profits. After such reversal B ap-
plied to and obtained an order from the Court of first
instance for possession and mesne profits. This order,
so far as it awarded mesne profits was set aside.

Court had
orders having
been made as being
The High
the Appel-
should have

brought a separate suit for the mesne profits. An

7

consistently that the period occupied in obtaining
an order seeking to uphold such order could not be
deducted in computing the period of limitation for
the suit subsequently brought by B for the mesne
profits. HURRO CHUNDER ROY CHOWDHRY v
DOORADHONEE DEBIA

[B L R., Sup Vol., 935 9 W R., 402]

71 ————— Deduction of time for
suit was pending—An objector's claim under Act
VIII of 1859 s 210 having been disallowed he

Held that in calculating limitation no deduction
could be made for the time consumed in not having
been dismissed for defect of jurisdiction or for some
analogous cause to defect of jurisdiction in the first
suit and it was also barred because the cause of
action in the second suit was the same as that in the
first. RAGHONATH PRASHAD v SURJOO PRASHAD
SINGH

22 W R., 162

LIMITATION ACT, 1877—continued.

1. ——— s. 17.—*Suit for account against manager of company—Accrual of right on death of manager against representatives.*—On the death of the manager of a company, a fresh right to an account accrues to the employer as against the manager's representatives. In a suit for such an account accruing to the employer on the death of his manager limitation will not commence to run until administration has been taken out to such manager's estate. *LAWLESS v. CALCUTTA LANDING AND SHIPPING CO., LD. CALCUTTA LANDING AND SHIPPING CO., LD. v. LAWLESS* . . . I. L. R., 7 Calc., 627

2. ——— *Suit against the representatives of deceased person.*—Where the defendant in a suit died before the plaintiff against him was filed, and the suit was some time after carried on against his representatives, the time during which the suit was being prosecuted *bonâ fide* against the dead man may be deducted in calculating the period of limitation against his representatives. *MOHAN CHAND KANDU v. AZIM KAZI CHOWKIDAR*

[3 B. L. R., A. C., 233; 12 W. R., 45]

3. ——— *Death of partner—Subsequent recovery of asset by surviving partner—Suit by administrator of deceased partner against surviving partner for recovered assets—Suit for partnership account—Form of decree.*—In 1889 one H, a widow and a partner in a firm carrying on business in partnership with two persons, viz., G and B (defendants Nos. 1 and 2), in Sind and at Behrin in the Persian Gulf, died, and the partnership was then dissolved. H had no children, but it was alleged that she had adopted one P, the brother of the second defendant. On the 13th February 1890, the guardian of one K, a minor (H's husband's nephew), applied to the High Court of Bombay for letters of administration to her estate, alleging that K was her heir and next of kin. A caveat was filed by her father and others, in which they denied that K was her heir, and alleged that P had performed her funeral ceremonies. The matter came on as a suit on the 19th February 1894, when an order was made, without prejudice to any of the questions raised by the issues, dismissing the application and ordering letters of administration to H's estate to issue to the Administrator General of Bombay. Letters of administration were accordingly granted to him on the 30th March 1894. In the meantime, however, viz., on the 12th April 1893, B (defendant No. 2) had filed three suits in the High Court of Bombay, in the name of himself and G (defendant No. 1), as surviving partners of H's firm, to recover certain debts due to that firm. Disputes subsequently arose between B and G, and by a consent order of the 22nd July 1893 it was ordered that any moneys recovered in the said three suits should be paid over to a receiver (defendant No. 3), to be held by him until further order. On the 1st August 1893, consent decrees were passed in the above three suits for a total sum of Rs. 28,335, which was forthwith handed over to the receiver. On the 22nd April 1894, this suit was filed by the Administrator General of Bombay as administrator of H appointed as above stated. He claimed to recover the whole sum paid to

LIMITATION ACT, 1877—continued.

the receiver, alleging that the first and second defendants as H's partners were largely indebted to the firm, and that the money really belonged to her estate. He prayed that the receiver might be directed to pay over the money to him, and that, if necessary, the partnership accounts should be taken. The second defendant (*inter alia*) pleaded that the suit was one for partnership accounts, and was barred by limitation. Held that s. 17 of the Limitation Act (XV of 1877) applied, and that under its provisions the suit was not barred. *RIVETT-CARNAO v. GOCUL DAS SOBHANMULL* . . . I. L. R., 20 Bom., 15

Held by the Privy Council, affirming the decision of the High Court of Bombay, that the suit was not barred by time; on the ground that the Administrator General having been the only person capable of suing within the meaning of s. 17 of Act XV of 1877 (Limitation), that section operated to allow the period of art. 106 to be computed from the issue of administration of the estate. A decree was made for a general partnership account to establish what was due to the estate of the deceased in respect of her share in the partnership, and of any money of hers employed in the business continued by the survivors. *BHAGWANDAS MITHARAM v. RIVETT-CARNAO*

[I. L. R., 23 Bom., 544
L. R., 26 I. A., 32
3 C. W. N., 186]

— s. 18 (1871, s. 19; 1859, s. 9).

1. ——— *Fraud—Want of knowledge of rights.*—S. 9, Act XIV of 1859, was only applicable when the plaintiff had been kept from a knowledge of his rights by means of fraud. *MUK-SOOD ALI v. GOWHUR ALI* . . . W. R., 1864, 364

2. ——— *Fraud—Person with means of knowledge.*—When he was or had been in a position in which he might have known of the fraud and ought to have done so, s. 9, Act XIV of 1859, was not applicable; his knowledge must be presumed. *INDROBHOSUN DEB ROY v. KENNY*

[3 W. R., S. C. C. Ref., 9]

3. ——— *Fraud—Cause of action—Act I of 1845, s. 29.—Semble.*—S. 19 of Act IX of 1871 was applicable only to those cases where the fraud was committed by the party against whom a right is sought to be enforced. *Per MITTER, J.—Quære*—Whether, if the plaintiffs' case were established, their claim would not be saved from the operation of the Law of Limitation by s. 29, Act I of 1845. *RAMDOYAL KHAN v. AJODHIA RAM KHAN* . . . I. L. R., 2 Calc., 1; 25 W. R., 425

4. ——— *Suit against auction-purchaser.*—This section does not apply as against an auction-purchaser, unless the plaintiff can show that she was by intention and fraud ignorant of the sale at or immediately after the time it occurred. *SHAO SAHAE PANDAY v. RUTTA BEEBEE* . . . 2 N. W., 180

5. ——— *Fraud—Person kept from knowledge of fraud.*—Where a plaintiff sufficiently alleged that the plaintiffs being entitled to property were ousted from its enjoyment under colour of a fictitious revenue sale in pursuance of a fraudulent

LIMITATION ACT, 1877—continued.

of 1877), that, where a suit is withdrawn with leave to

Civil Procedure is, in such a case, not removed by s 14 of the Limitation Act, as causes for which the withdrawal of a suit on application may be permitted are not causes "of a like nature" with defect of jurisdiction. *PINJADE v. PINJADE*

[I. L. R., 6 Bom., 681]

80. ———— *Mistake or want of enquiry—Deduction of time during which plaintiff was prosecuting another suit*—A plaintiff who through want of enquiry or mistake, brings a suit which he is unable to establish, will not be allowed, on discovering his error and bringing a suit in which he would have been entitled to recover, had he brought it within time, to take advantage of his own mistake to relieve himself from the law of limitation. *HURRO PROSHAD ROY v. GOPAL DASS DUTT*

[I. L. R., 3 Cal., 817; 2 C. L. R., 450]

S C on appeal to Privy Council

[I. L. R., 9 Cal., 255]

12 C. L. R., 129

I. R., 9 I. A., 82

81. ———— *Suit in foreign Court,*

[I. L. R., 2 Mad., 407]

82. ———— *Deduction of time pending suit*—A plaintiff who brings a suit for recovery of money due to him, and who, before bringing the suit, has been in possession of the money, is not entitled to deduct the time during which he was in possession of the money from the time within which he must bring the suit.

JUGENDER BUNWARRE v. DIN DYAL CHATTERJEE

[I. W. R., 310]

1. ———— s. 15—*Deduction of time injunction afterwards dissolved has been in force—*

[I. L. R., 6 Bom., 26]

2. ———— *Injunction to restrain partner collecting debts—Sue by receiver*—In a suit brought in 1880 by the widow of a deceased partner, to wind up a partnership, the surviving partner was prohibited by the Court, at the instance of the plaintiff, from collecting debts due to the firm; but leave was given to apply for the recovery of

LIMITATION ACT, 1877—continued.

debts which might become barred by limitation. After decree, on the application of the plaintiff, a receiver was appointed to collect outstanding debts for the purpose of executing the decree. The receiver having sued in 1883 to recover a debt which was due to the firm in 1879, the suit was dismissed on the ground,

3. ———— *Period of time injunction was in force*—A member of a firm sued for a partnership debt and obtained a decree, he died before

time during which the injunction was in force was not to be excluded in computing the period of limitation. *RAJANATHNAM v. SHEVALAKMAL*

[I. L. R., 11 Mad., 103]

4. ———— *Order prohibiting creditor from recovering debt—Attachment of debt—Civil Procedure Code, s. 268—Injunction or order staying suit*—*Semle*—An order of attachment under s. 268 of the Civil Procedure Code is not an injunction or order staying a suit within the meaning of s. 15 of the Limitation Act (XV of 1877). *SHIB SINGH v. SITA RAM*

I. L. R., 13 All., 76

5. ———— *Attachment of debt secured*

party and restraining the attaching creditor from subsequently bringing the bond to sale in execution

followed. *COLLECTOR OF ETAWAH v. BETI MAHAHANI*

I. L. R., 14 All., 162

6. ———— *Civil Procedure Code*

[I. L. R., 22 I. A., 31]

LIMITATION ACT, 1877—continued.

defendant) could not be allowed to impeach it as a defence to an action by the plaintiffs. **JUGALDAS v. AMBASHANEAR**. I. L. R., 12 Bom., 501

12. ——— and art. 186—*Civil Procedure Code (Act XIV of 1882), ss. 311, 312—Sale in execution—Application to set aside—Fraud.*—An application under s. 311 of the Civil Procedure Code to set aside a sale cannot be made after the expiry of thirty days from the date of such sale and after such sale has been confirmed, even though it be alleged that the sale was fraudulently kept from the knowledge of the applicant until after such confirmation. *Semble*—That if, before such sale had been confirmed, an application had been made, although after thirty days from the date of the sale, the Court would possibly have been justified in granting the application and extending the period of limitation if sufficient cause under s. 18 of the Limitation Act were made out. **GOBIND CHUNDRAMAJUMDAR v. UMA CHARAN SEN** I. L. R., 14 Cal., 679

13. ——— *Application by judgment-debtor to set aside sale on ground of fraud—Concealment of right to set aside sale.*—When a judgment-debtor makes an application to have an execution-sale set aside under s. 311 of the Civil Procedure Code after the expiry of the period of limitation prescribed in art. 166, sch. II of the Limitation Act, he must bring his case within s. 18 of the Act; and to enable him to do this it is not enough for him to show that the execution proceedings were irregular and fraudulent; he must carry the fraud further and show that the existence of his right to set aside the sale has been kept concealed from his knowledge by the fraud of the decree-holder or the auction-purchaser. **KAILASH CHANDRA HALDAR v. BISSONATH PARAMANIC**

[I. C. W. N., 67]

14. ——— *Fraud—Knowledge kept from the Official Assignee, of his right to sue for an account of assets fraudulently transferred by an insolvent—Burden of proving when first the plaintiff had clear and definite knowledge—Account, Decree for.* Prior to and in the year 1865 the defendant's brother B carried on an extensive business in Bombay and in China. The defendant and another brother (A) carried on a separate business under the name A H. In December 1866 B became insolvent and his property vested in the Official Assignee. The present suit was brought in 1887 against the defendant by the Official Assignee to recover certain property which he alleged belonged to the insolvent and ought to be distributed among his creditors. The plaintiff alleged that in 1865 the insolvent was possessed of a very large amount of property, and that, being unwilling to meet his liabilities, he and his son and his two brothers, viz., A and the defendant B, fraudulently concealed his property from his creditors, and in September 1866 he himself went to Daman, beyond British jurisdiction. In 1881 the plaintiff, having obtained information that some of insolvent's property was in the possession of his brother A, filed a suit (No. 473 of 1881) against A, to recover it. That suit was referred to arbitration, and the plaintiff obtained a decree for Rs. 60,000.

LIMITATION ACT, 1877—continued.

The plaintiff now alleged that shortly before the hearing of that suit, and subsequently, he had obtained information which led him to believe that the defendant had obtained some of the insolvent's property for which he was accountable. The defendant had been made a party to the former suit, No. 473 of 1881, for the purpose of discovery only, and it was in the course of such discovery being given that some of the above information had been obtained. The plaintiff then set forth, in detail, the various items of claim in respect of which the plaintiff sought to make the defendant liable. The defendant pleaded that the claims were barred by limitation. *Held* by SCOTT, J., that the suit was not barred by limitation. There was sufficient evidence of fraud to bring the case under s. 18 of the Limitation Act (XI of 1877). The limitation only began to run from the time the fraud became fully known to the Official Assignee, which was not until December 1885. The knowledge required by s. 18 of the Limitation Act is not mere suspicion. It must be knowledge of such a character as will enable the person defrauded to seek his remedy in Court. The Court of Appeal (SARGENT, C.J., and BAYLEY, J.) confirmed the decree of the Court of first instance, except as to one of the allowed items, which it held to be barred by limitation. *Held*, on appeal to the Privy Council: In order to make limitation operate when a fraud has been committed by one who has obtained property thereby, it is for him to show that the injured complainant has had clear and definite knowledge of the facts, constituting the fraud, at a time which is too remote for the suit to be brought. Suggestion of his having been defrauded does not amount to such knowledge as is required by s. 18, Act XV of 1877. In this suit it was established that the defendant, receiving in 1869, upon a voluntary transfer, some of the insolvent's assets, joined and assisted him in defrauding his creditors; and that no disclosure of this fraud was made to the Official Assignee, while the defendant did what he could to prevent the latter from seeing the accounts of the assets transferred. *Held*, therefore, that the burden of proof was on the defendant to show that the plaintiff had clear and definite knowledge of this fraud for more than the period of limitation. This burden had not been discharged by proof of the fact that some hints and clues had reached the Official Assignee which might have led to such knowledge; and *held* that the Official Assignee had been kept from knowledge of his right to sue, within the meaning of s. 18. A decree that the defendant should account to the Official Assignee for the assets received by him from the insolvent, after the date of the insolvency was affirmed. **RAHIMBOY HANIBHOY v. TURNER**

[I. L. R., 17 Bom., 341
L. R., 20 I. A., 1]

Affirming on appeal **RAHIMBOY HANIBHOY v. TURNER** I. L. R., 14 Bom., 408

15. ——— *Salt Act (XII of 1852)—Limitation prescribed for charging with offence—Fraud in concealing date of offence.*—The provisions of s. 18 of the Limitation Act of 1877 do not apply to criminal cases, and the peremptory terms of s. 11 of

LIMITATION ACT, 1877—continued

and brought the case within Act XIV of 1859 s 9
DWARAKANATH BHOOLA & AJODHYA RAM KHAN

[21 W R, 109]

See **ROBERT & LOMBARD**

[1 Ind. Jur., N S, 192]

8. ———— *Fraud—Concealment of cause of action*—In a suit to recover landed and other property to which plaintiff made title by in-
 tentionally concealed from the knowledge of the plaintiff he must through the fraudulent concealment b

7. ———— *Suit for money received by agent and concealed from principal*—A suit against an agent to recover money received by him and concealed from the plaintiff fell within Act XIV of 1859 s 9 **HOSSEIN BUKSH & TISSUDUCK HOSSEIN**
 [21 W R, 245]

PROVISIONS OF ACT XIV OF 1859 s 9 apply to suits brought under s 18 time began to run against the Collector only from November 1877 *Quære*—Whether time began to run against such ap-
 plications

542

No limitation does apply to such applications See
COLLECTOR OF BHOACH & DESAI RAGHUNATH
 [1 L R, 7 Bom, 548]

LIMITATION ACT, 1877—continued

clearly that the document must have been fraud-
 lently concealed from the knowledge of the plaintiff
 he must through the fraudulent concealment b

ANANTA LAKSHMINARAYAN PANTALU & LAKSHMIBAI ANKINID
 [7 Mad, 22]

11. ———— *Landlord and tenant—Sale by landlord of land held by tenant—Fraud in such sale*—Suit by purchaser against tenant—*Plea by tenant impeaching sale by his landlord*—The defendant was tenant of the lands in dispute under a lease dated 2nd June 1870. In 1878 his landlord sold the lands to the plaintiffs by registered deed.

tiffs denied. In September 1881 the wife of the plaintiff brought a suit against the plaintiffs in which he prayed for a declaration that the sale of the land to the plaintiffs was fraudulent and that no consideration had been paid. This suit however was

lease the defendant had contracted to pay Rs 240 annually. The defendant in his defence raised the question whether the sale to the plaintiffs was not fraudulent and without consideration. Held that the right of the defendant to plead as a defence to this suit that the plaintiffs purchase of the

LIMITATION ACT, 1877—continued.**1. ACKNOWLEDGMENT OF DEBTS—continued.**

we have informed your client, we are quite willing to pay him the sum due under our mortgage, provided if he can show a title to give us a good receipt for it that will satisfy our lawyers. If he is in the same position that his father was up to the time of his death unable to produce a perfect title, we are still willing to pay him the sum on his giving us a substantial indemnity similar to that which we had from his father." *Held* that this was a sufficient acknowledgment within s. 19 of the Limitation Act. **BYNOD LAL LOKHA v. WILSON**

[**I.L.R.**, 28 Cal., 204
2 C. W. N., 718

11. — *Debt under Punjab Code—Acknowledgment.*—Under the Punjab Code, and before Act XIV of 1859 took effect in Cash, letters offering to pay a debt by instalments, and paying to be exempted from the payment of interest, were an ample acknowledgment of the debt to save limitation. **MUSKAT LAL v. HATHORODOWAN**

[**5 W. R.**, P. C., 18; 1 Ind. Jur., N. S., 142
10 Moore's L. A., 382

12. — *Letter with remittance "on old account."*—The defendant sent a letter dated 22nd December 1858 to the plaintiff, which contained the following passage: "P.S.—Enclosed a remittance of £40 to old account." *Held* (on appeal, reversing the decision of NORMAN, J.) the words "remittance of £40 to old account" were ambiguous, and did not necessarily import that a further sum was due, so as to constitute an acknowledgment of a debt which would give a new period of limitation. **SERIBAMA v. EASTON**

[**5 B. L. R.**, 619

13. — *Admission of debt with averment that it is not due.*—An admission of a debt with the appended averment that it is not yet payable in principle is not an acknowledgment of a debt under s. 4 Act XIV of 1859. An admission that a sum of money will be payable on the happening of an event future and uncertain is not an acknowledgment of a debt, but the allegation of factious out of which a debt may at some time arise. **TORE v. MANJESWAR RAO**

[**3 Msd.**, 308

14. — *Sum. Rep. J. of 1827, v. 1, p. 1—Debt acknowledged.*—*Held* that an admission in writing of the making of a promissory note, accompanied by a repudiation of liability in respect thereof, was not such an acknowledgment as would revive a barred claim. **NARADASHANKAR v. BOONPATE**

[**2 Bom.**, 349

15. — *Admission of debt to third person.*—The admission to a third party in writing that a sum is due is not such an acknowledgment of a debt as to revive such debt out of the Statute of Limitations. **PERSEED PESS v. DOKHARAT PESS**

[**2 Hyde**, 14

IN THE MATTER OF THE GANES STAM NAVIGATION COMPANY

[**2 Ind. Jur.**, N. S., 180

16. — *Admission of debt to third person.*—An admission by A of his debt to B contained in a bond given by A to his agent may take a suit

LIMITATION ACT, 1877—continued.**1. ACKNOWLEDGMENT OF DEBTS—continued.**

against A out of the Statute of Limitations. **HUTO CHUND ROR v. MONES MOHINI DASS**

[**3 W. R.**, S. C. C. Ref., 6

17. — *Admission to third person.*—An acknowledgment made in writing to a third party and not to the creditor is sufficient under the section. *Quere*—Whether an acknowledgment to satisfy the section must be made before suit. The English and Indian law of limitation considered and contrasted. **NEANTIN v. MAHARADAN**

[**4 Msd.**, 385

18. — *Admission—Exemption from limitation.*—In a suit for the recovery of costs incurred by the Government of Bengal, in virtue of the Stat. 3 & 4 Will. IV, c. 41, authorizing the Crown to appoint the East India Company to take charge of appeals and bring them to a hearing, the admission by a defendant that a demand was claimable from some quarter or other, but not as against the property in question, was held not to be an admission within the meaning of Regulation III of 1793, excepting a suit from limitation under that Regulation. **GOVERNMENT OF BENGAL v. SETHUPOTTONNIAI**

[**3 W. R.**, P. C., 31
[**8 Moore's L. A.**, 225

19. — *Memo. of payments endorsed on bond.*—Memoranda of payments made, endorsed on the bond and signed by the defendant, were not acknowledgments in writing within the meaning of s. 4 Act XIV of 1859. **GORACHAND DIT v. LOKNATH DIT**

[**5 W. R.**, 334

20. — *Verbal admission of a debt.*—A mere verbal admission of the existence of an account, the terms of which authorized by the Statute of Limitations, does not furnish a new starting-point for the operation of the statute. **SERIBAMA v. EASTON**

[**3 Msd.**, 378

21. — *Admission of balance of account.*—When an indigo planter and a raiyat contract, the former to make advances of money or seed for the cultivation of indigo plants, and the latter to deliver the indigo plant grown, a mere verbal admission by the raiyat of the correctness of an account constituting cross items due, without a written acknowledgment from him that the balance due does not operate to create or revive any liability with reference to the law of limitation. **DORE v. ADITY BHATT**

[**4 W. R.**, S. C. C. Ref., 1

DORE v. EDOO GANGE

[**3 W. R.**, S. C. C. Ref., 13

22. — *Set-off—Balance of account.*—Balance sheet and account only admitted.—In a suit for the recovery of certain sums advanced as loans at different times the account rendered was simply a statement of advances, repayment, and balance, which was admitted, struck, and verbally admitted by the debtor. *Held* that the balance so struck and admitted by the debtor did not amount to a written acknowledgment within the 4th section of Act XIV of 1859, or to a new contract.

LIMITATION ACT, 1877—continued

the Indian Salt Act (XII of 1882) are not affected by that section. **QUEEN EMPRESS v. NAGESHAPPA PAI**

[I L R, 20 Bom, 543]

— s 19 (1871, s 20, 1859, s 1, cl 15, and s 4)

Col

1 ACKNOWLEDGMENT OF DEBTS 4857

2 ACKNOWLEDGMENT OF OTHER RIGHTS 4876

See ACCOUNT STATED

[I L R, 22 Bom, 513]

See BENGAL RENT ACT 1869 s 30

[I L R, 5 Calc, 303]

See CIVIL PROCEDURE CODE s 253

[I L R, 16 All, 328]

See CONTRACT ACT s 23

[I L R, 4 Calc, 500]

[I L R, 6 Bom, 683]

See EVIDENCE CIVIL CASES SECONDARY EVIDENCE—UNSTAMPED AND UNREGIST-
TERED DOCUMENTS

[I L R, 18 Bom, 614]

[I L R, 21 Bom, 201]

See STAMP ACT 1899 s 34

[I L R, 18 Bom, 614]

See STAMP ACT 1899 SCH I ART 1

[I L R, 15 All, 56]

1 ACKNOWLEDGMENT OF DEBTS

This section, like s 4 of the Act of 1859 and s 20 of that of 1871, requires a distinct acknowledgment

1 ———— *Oral evidence of acknowledgment—Acknowledgments made before the coming into force of Act XI of 1877—Under s 19 of the Limitation Act (XV of 1877) oral evidence of the contents of an acknowledgment cannot be received nor is there any saving of acknowledgments received or given back before the Act came into operation.* **WILKINSON LADLI BEGAM v. MOTILAL PATANDEY**

[I L R 12 Bom, 266]

period of limitation **KALAI KRAN v. MADHO PER-
SEAD**

3 N W, 129

It is not necessary to specify the precise amount of the debt

4 ———— *Acknowledgment of debt—Where a plaintiff sued for a debt due under a kharar nama,—Held that in order to bring the case within*

LIMITATION ACT, 1877—continued**1 ACKNOWLEDGMENT OF DEBTS—continued**

KISHEN GOSWAMI v. BRINDABAN CHANDRA SIKHAR CHOWDHRY

3 B L R., P C, 37

S C GOPAL KISHEN GOSWAMI v. BRINDABAN CHUNDER SIKHAR CHOWDHRY

12 W R, P C, 36

[13 Moore s I A, 37]

Contra **NOBIN CHUNDER MOZOOMDAR v. KENNY**

[5 W R., S C C Ref., 3]

5 ———— *Promise to pay debt of third person—A promise to pay a third person's debt would be sufficient though the amount were not ascertained.* **HEARIE LALL SHAHA v. WOOMESH CHUNDER MOZOOMDAR**

9 W R., 140

6 ———— *Letters containing no precise sum or promise to pay—In a suit for the price of goods the period of limitation had expired but the Court held that certain letters written by the defend-*

[9 B L R., Ap, 43]

7 ———— *Want of assent to amount acknowledged—A creditor who does not openly*

ILALJI SAHOO v. POGHOONUNDEN LALL SAHOO

[I L R, 8 Calc, 447]

8 ———— *Letter in indefinite terms—A letter containing no distinct admission of a debt but only doubtful expressions held not to be a written acknowledgment such as s 4 Act XIV of 1859 requires for the revival of a right of suit.* **GASKIN v. McLEAN**

2 N W, 403

9 ———— *Acknowledgment inferred from tenor of correspondence—An acknowledgment not coming directly from the debtor himself but merely deduced as an inference from the tenor of a series of letters was not a sufficient acknowledgment to satisfy s 4 Act XIV of 1859. To satisfy that section there must be some principal writing of a particular date which can be relied on by itself when properly construed as constituting an acknowledgment of the debt.* **POGERS v. MONTROU**

[6 B L R., 550]

10 ———— *Suit for arrears of rent—Limitation Act s II art 110—The plaintiffs*

LIMITATION ACT, 1877.

1. ACKNOWLEDGMENT OF DEBTS.—*Continued.*
Act. 1877, s. 19. In a suit to recover a debt, the defendant pleaded limitation. The plaintiff relied on an acknowledgment of the debt made by the defendant in writing, dated 10th July 1882, which was endorsed on the bond. No other payments had been made, but the plaintiff pleaded in bar of limitation that the debt had meanwhile been three times acknowledged in writing. One of the acknowledgments relied upon was said to be contained in a deposition given by the obligor and signed by him, as a witness in a suit to which he was not a party. *Held* that an acknowledgment in order to satisfy the requirements of Limitation Act, 1877, s. 19, must involve an admission of the debt, and must be made by the debtor or creditor, and not by a third party. *See per MATHIAS J. (WILKINSON, J. dissenting), that a deposit made by a party as a witness in a suit to which he was not a party, and signed by him, as a witness, is not an acknowledgment by him to a third party.* *AYYAR, J. (PANTHAKIAN, J. dissenting).* **I. L. R., 16 Mad., 220**

LIMITATION ACT, 1877—continued.

1. ACKNOWLEDGMENT OF DEBTS—continued.

Act. 1877, s. 19. In a suit against the defendant, the plaintiff relied on an acknowledgment of the debt made by the defendant in writing, dated 10th July 1882, which was endorsed on the bond. No other payments had been made, but the plaintiff pleaded in bar of limitation that the debt had meanwhile been three times acknowledged in writing. One of the acknowledgments relied upon was said to be contained in a deposition given by the obligor and signed by him, as a witness in a suit to which he was not a party, and signed by him, as a witness, is not an acknowledgment by him to a third party. *AYYAR, J. (PANTHAKIAN, J. dissenting).* **I. L. R., 16 Mad., 220**

35. Acknowledgment in writing.

Act. 1877, s. 19. In a suit against the defendant, the plaintiff relied on an acknowledgment of the debt made by the defendant in writing, dated 10th July 1882, which was endorsed on the bond. No other payments had been made, but the plaintiff pleaded in bar of limitation that the debt had meanwhile been three times acknowledged in writing. One of the acknowledgments relied upon was said to be contained in a deposition given by the obligor and signed by him, as a witness in a suit to which he was not a party, and signed by him, as a witness, is not an acknowledgment by him to a third party. *AYYAR, J. (PANTHAKIAN, J. dissenting).* **I. L. R., 16 Mad., 220**

I. L. R., 16 Mad., 380

36. Acknowledgment of liability in joint tenancy.

Act. 1877, s. 19. In a suit against the defendant, the plaintiff relied on an acknowledgment of the debt made by the defendant in writing, dated 10th July 1882, which was endorsed on the bond. No other payments had been made, but the plaintiff pleaded in bar of limitation that the debt had meanwhile been three times acknowledged in writing. One of the acknowledgments relied upon was said to be contained in a deposition given by the obligor and signed by him, as a witness in a suit to which he was not a party, and signed by him, as a witness, is not an acknowledgment by him to a third party. *AYYAR, J. (PANTHAKIAN, J. dissenting).* **I. L. R., 16 Mad., 220**

I. L. R., 25 Cal., 844
[L. R., 25 I. A., 95]
2 C. W. N., 402

37. Post-card sent by defendant to plaintiff.

Act. 1877, s. 19. In a suit against the defendant, the plaintiff relied on an acknowledgment of the debt made by the defendant in writing, dated 10th July 1882, which was endorsed on the bond. No other payments had been made, but the plaintiff pleaded in bar of limitation that the debt had meanwhile been three times acknowledged in writing. One of the acknowledgments relied upon was said to be contained in a deposition given by the obligor and signed by him, as a witness in a suit to which he was not a party, and signed by him, as a witness, is not an acknowledgment by him to a third party. *AYYAR, J. (PANTHAKIAN, J. dissenting).* **I. L. R., 16 Mad., 220**

32. Acknowledgment of debt.—*Continued.*
Act. 1877, s. 19. In a suit to recover a debt, the defendant pleaded limitation. The plaintiff relied on an acknowledgment of the debt made by the defendant in writing, dated 10th July 1882, which was endorsed on the bond. No other payments had been made, but the plaintiff pleaded in bar of limitation that the debt had meanwhile been three times acknowledged in writing. One of the acknowledgments relied upon was said to be contained in a deposition given by the obligor and signed by him, as a witness in a suit to which he was not a party. *Held* that an acknowledgment in order to satisfy the requirements of Limitation Act, 1877, s. 19, must involve an admission of the debt, and must be made by the debtor or creditor, and not by a third party. *See per MATHIAS J. (WILKINSON, J. dissenting), that a deposit made by a party as a witness in a suit to which he was not a party, and signed by him, as a witness, is not an acknowledgment by him to a third party.* *AYYAR, J. (PANTHAKIAN, J. dissenting).* **I. L. R., 16 Mad., 220**

33. Acknowledgment of debt.—*Continued.*
Act. 1877, s. 19. In a suit to recover a debt, the defendant pleaded limitation. The plaintiff relied on an acknowledgment of the debt made by the defendant in writing, dated 10th July 1882, which was endorsed on the bond. No other payments had been made, but the plaintiff pleaded in bar of limitation that the debt had meanwhile been three times acknowledged in writing. One of the acknowledgments relied upon was said to be contained in a deposition given by the obligor and signed by him, as a witness in a suit to which he was not a party. *Held* that an acknowledgment in order to satisfy the requirements of Limitation Act, 1877, s. 19, must involve an admission of the debt, and must be made by the debtor or creditor, and not by a third party. *See per MATHIAS J. (WILKINSON, J. dissenting), that a deposit made by a party as a witness in a suit to which he was not a party, and signed by him, as a witness, is not an acknowledgment by him to a third party.* *AYYAR, J. (PANTHAKIAN, J. dissenting).* **I. L. R., 16 Mad., 220**

34. Acknowledgment of debt.—*Continued.*
Act. 1877, s. 19. In a suit to recover a debt, the defendant pleaded limitation. The plaintiff relied on an acknowledgment of the debt made by the defendant in writing, dated 10th July 1882, which was endorsed on the bond. No other payments had been made, but the plaintiff pleaded in bar of limitation that the debt had meanwhile been three times acknowledged in writing. One of the acknowledgments relied upon was said to be contained in a deposition given by the obligor and signed by him, as a witness in a suit to which he was not a party. *Held* that an acknowledgment in order to satisfy the requirements of Limitation Act, 1877, s. 19, must involve an admission of the debt, and must be made by the debtor or creditor, and not by a third party. *See per MATHIAS J. (WILKINSON, J. dissenting), that a deposit made by a party as a witness in a suit to which he was not a party, and signed by him, as a witness, is not an acknowledgment by him to a third party.* *AYYAR, J. (PANTHAKIAN, J. dissenting).* **I. L. R., 16 Mad., 220**

LIMITATION ACT, 1877—continued

1 ACKNOWLEDGMENT OF DEBTS—continued

as to revive the old cause of action. KUNNYA LALL
v BUNSEB . Agra, F. R., 94—Ed 1874, 71

23 ——— Commission agent—A
acted as commission agent for B and C. A furnished

balance due to him. Held that B and C had made
an acknowledgment of their debt to A and that the
suit was not barred by limitation. SITAYYA v
RANGAREDDI I L R, 10 Mad, 259

The Subordinate Judge being of opinion that the
suit was barred referred the case to the High Court.
Held that the suit was not barred the second
acknowledgment having been made within the
new period arising from the first acknowledgment
was made within a period prescribed for the suit and
was therefore itself the starting point of a new
period. ATMARAM v GOVIND

[I L R, 11 Bom, 282]

25 ——— Acknowledgment—Agree-

private expenses. I have passed you no bond for
the money. To day I have taken 16300 more making
Rs 1845 in all. For that I will give you a bond 15
days hence. I have received the money. In a suit
brought in June 1897 to recover principal and interest
due on this document—Held it was not a mere

26 ——— Verbal promise to pay—
De v contract—In a suit by the plaintiff to recover
money lent more than three years before suit the

LIMITATION ACT, 1877—continued

1 ACKNOWLEDGMENT OF DEBTS—continued

KINDERSLEY J—If a debtor and creditor enter into

in the section means no more than that the debt is
owing and that there is an existing obligation to pay
it. NIRMALUDIN v MAHAMADALI 4 Mad, 385

28 ——— Promise to pay sum for
which promissory note was given—A suit was brought
on a promissory note by which the defendant promised
to pay to the plaintiff Rs 1000 with interest at the rate

v C WOOMESH CHUNDER MOOKERJEE SAGMAN
[12 W R, O C, 2]

See GUTIKISHEN GOSWAMI v DEENDARU
CHANDRA SIEKHAR CHOWDHRY
[3 B L R, P C, 37 12 W R, P C, 36
13 Moore's I A, 37]

29 ——— Admission in bill of

power of sale in default of payment. The whole
property including the mortgaged portion was con-
veyed to one I D on 27th November 1864 by a bill
of sale executed by the three owners of the property.
On the execution of the bill of sale the sum of
Rs 16250 the half of the purchase money which be-
longed to the defendant was handed over to the

1864 was a sufficient acknowledgment to take it out
of the operation of Act XIV of 1859 s 4. MADHU
SUDAN CHOWDHRY v BRAJANATH CHANDRA
[9 B L R, 299]

30 ——— Admission in writing—
In a suit to recover the balance alleged to be due on
certain promissory notes the plaintiff relied on a
document to prevent the operation of Act XIV

LIMITATION ACT, 1877—continued.**1. ACKNOWLEDGMENT OF DEBTS—continued.**

to run from the date of the kabuliat which operated as a written acknowledgment signed by defendant (s. 4, Act XIV of 1859). *Held* too that a statement of balances found in one of plaintiff's books duly verified, without any signature by defendant (who could not write), was not an acknowledgment within the meaning of s. 1. The entry of defendant's name in one column, taken in connection with a cross in another column, formed no valid signature. **INDIGO COMPANY v. KOILASH CHUNDER DASS**

[10 W. R. 203]

49. ——— Acknowledgment of debt—

Secondary evidence of acknowledgment—Authority to bind minor by acknowledgment.—An original account book containing an acknowledgment of a debt had been filed in Court, and subsequently lost whilst in Court. *Held* that secondary evidence of such acknowledgment might be given, notwithstanding the words of s. 19 of the Limitation Act. A person merely by reason of being the mother and guardian of a minor has no authority to make an acknowledgment of a debt on behalf of the minor so as to give a creditor a fresh start for the period of limitation. **WASHEN v. KADIE BEKSH**

[I. L. R., 13 Cal., 292]

50. ——— Acknowledgment—Entry

of a debt in a debtor's book.—An entry in a debtor's own book does not amount to an acknowledgment within the meaning of s. 19 of Act XV of 1877, unless communicated to his creditor or to some one on his behalf. Explanation 1 to s. 19 showing that the acknowledgment is contemplated as "addressed" to the creditor. Every acknowledgment, in order to create a new period of limitation, must be signed by the debtor, or some one deputed by him, no matter in what part of the document the signature is placed. **MARALAKSHMIBAI v. PIRI OF NAGRIHWAN PRINSHOTAM**

[I. L. R., 10 Bom., 71]

51. ——— Application by judgment-

debtor for postponement of sale.—An application by the defendant for a postponement of the sale of his property when he promised to pay the amount of the decree was held to be an admission of the plaintiff's right to execute the decree within the contemplation of s. 19 of the Limitation Act (XV of 1877), and created a new period of limitation. **VENKATRAY BAPT v. BIJESING VITHALSING**

[I. L. R., 10 Bom., 108]

52. ——— Deposition signed by the

debtor.—To satisfy the requirements of s. 19 of the Limitation Act, an acknowledgment of a debt must amount to an acknowledgment that the debt is due at the time when the acknowledgment is made. A record made by a Judge of the evidence given by a debtor as a witness at the trial of a suit, and signed by the debtor, is a writing signed by the debtor within the meaning of s. 19 of the Limitation Act. **PERIAVENKAN UDAYA TEVAR v. SUBRAMANIAN CHETTI. SUBRAMANIAN CHETTI v. PERIAVENKAN UDAYA TEVAR**

[I. L. R., 20 Mad., 239]

53. ——— Account stated—Signing

by debtor.—Although to make an account a stated

LIMITATION ACT, 1877—continued.**1. ACKNOWLEDGMENT OF DEBTS—continued.**

account it is not necessary that it should be signed, yet, unless it is signed by the debtor, the intention and effect of s. 4 of Act XIV of 1859 is to prevent it being made the foundation of an action to recover a debt which would otherwise be barred by that Act. **MULCHAND GUJANOHAND v. GIRDHAR MADHAY**

[8 Bom., A. C., 6]

54. ———

Signature.—Where an account stated was written by a debtor himself, by his name at the top of the entry, it was held to be sufficiently signed within the meaning of s. 4 of Act XIV of 1859. **ANDARJI KALYANJI v. DULABH JEEVAN**

[I. L. R., 5 Bom., 88]

55. ———

Signature.—Where the whole of an account stated (khata) was written by a debtor himself with the introduction of his name at the top of the entry, the khata was held to be sufficiently signed within the meaning of Act XV of 1877, s. 19. **JEKIAN BAPUJI v. BHOWSAR BHOGA JETHA**

[I. L. R., 5 Bom., 89]

56. ———

"Signing." *What amounts to—Signature.*—Certain letters admitting a debt were written by the authority of the debtor, who was a desai. The only words, however, of the letter which were actually in his own handwriting were the words "guru swamth" (the exalted preceptor is strong) at the beginning of each letter, and the words "kalave, bahut kay lihine. lobh karara hi rinanti" (let this be known; what more need be written; keep regard; this is the representation) at the end. It was proved by evidence that this was the usual mode of signing and authenticating letters and informal documents among the class to which the defendant belonged. *Held* that, by analogy, the writing of specified words by desais at the top and bottom of letters, which was shown to be the usual way amongst persons of that class, of authenticating letters was a "signing" within s. 19 of the Limitation Act (XV of 1877), and that the letter was a valid acknowledgment. The ground upon which it is held that the mark of an illiterate debtor is a sufficient signature, is that the signing in such a manner as is usually adopted by the debtor with the view of showing that he intends to be bound by the document, renders the document effective as an acknowledgment under the section. Whether the circumstance of the debtor not signing his name is the result of necessity as in the case of an illiterate debtor, or of custom as in the case of a class of debtors having a special status in the community, can be of no importance. **GANGADHARRAO VENKATESH v. SHRIDHAMAPA BAPAPA DESAI**

[I. L. R., 18 Bom., 586]

57. ———

Acknowledgment of guardian for minor.—The signature of a guardian of a minor to an acknowledgment of a debt does not make it such an acknowledgment under s. 19 of the Limitation Act as would give a new period of limitation against the minor, the signature of the guardian not being a signature by the person against whom the right is claimed. **AZUDDIN HOSSAIN v. LLOYD**

[13 C. L. R., 112]

LIMITATION ACT, 1877—continued**1 ACKNOWLEDGMENT OF DEBTS—continued**

As to whatever debts may be due by my old man, I am bound to pay the same so long as there is life in me. This is indeed my earnest wish. After this, God's will be done. Therefore I will positively pay Rs 30. The post-card bore on it also the words 'without prejudice' in English. The lower Courts held that it was therefore inadmissible in evidence,

admissible in evidence, it was not admissible in evidence.

38 ————— *Unstamped acknowledgment of debt—Stamp Act (I of 1879), sec 1, art 1*
—An acknowledgment of a debt coming under art 1,

But see **FATEH CHAND HARCHAND v KISAN**
[I L R, 18 Bom, 614]

39 ————— *Default on payment of instalment*—Where a default having been made in payment of an instalment the debtor subsequently

41 —————

JOTEEKAM DOSS v HURUF 6 W R, Mis, 115

LUGHNEE NARAIN v SHUDASHEO SINGH
[5 W R, Mis, 12]

PROSUNNO COMMAR ROY CHOWDHURY v KASHEE KANT BHATTACHARJEE 5 W R, Mis, 31

LIMITATION ACT, 1877—continued.**1. ACKNOWLEDGMENT OF DEBTS—continued.**

CHUNDER KANT MITTER v RAMNARAIN DEY SINGAR 8 W R, 63

42 ————— *Instalment bond—New contract*—An instalment bond is not a promise or acknowledgment within the meaning of Act IX of 1871 s 20 but is complete in itself and does not require any reference to the old bond which it supercedes. It is a new contract with new stipulations and terms and limitation runs from the due dates therein mentioned. **TARA SOONDUREE KULOONER v BROODRA CHUNDER GHOSE** 23 W R, 462

44 ————— *Signature not by debtor*
—A letter not signed by the debtor was not an acknowledgment in writing within the meaning of s 4 Act XIV of 1859. **RAMNARAIN v HUREE DASS** [3 Agra, 81]

45 ————— *Acknowledgment not signed*—An acknowledgment in writing sealed but not signed by a defendant was not an acknowledgment within the meaning of s 4 Act XIV of 1859. **LUCHMUN PERSHAD v RUMZAN ALI** [8 W R, 513]

46 ————— *Signature not formally added*—To entitle a plaintiff to the benefit of a new period of limitation under that section he must prove that the party sued has in writing authenticated by his signature either in express terms or by reasonable construction, acknowledged and admitted that the debt or a part thereof is due from him. This signature need not be formally subscribed or added to an

47 ————— *Signature by mark*—

[7 Mad, 358]

48 ————— *Suit for balance of account for advances*—In a suit to recover a balance on account of indigo advances made on a khatulat executed by a defendant, where the defendant had broken no contract, but the discontinuance of the cultivation had been the act of the plaintiff, limitation was held

LIMITATION ACT, 1877—continued.**1. ACKNOWLEDGMENT OF DEBTS—continued.**

Limitation Acts do not give authority to an agent to sign an acknowledgment for his principal similar to that given by s. 20 of that Act and s. 19 of Act XV of 1877. Acknowledgments which are insufficient to keep alive a cause of action because they were signed only by an agent, are equally insufficient to sustain a suit on the same cause of action under Act XV of 1877, as s. 2 of the Act expressly bars the revival of a right to sue barred under the earlier Acts, although they might have been sufficient under Act IX of 1871. *DHARMA VITHAL v. GOVIND SADVAIKAR*

[I. L. R., 8 Bom., 99]

67. ———— *Acknowledgment—Authorized agent.*—A balance of account was written by a person at the request of an illiterate debtor in the debtor's name, and signed by the writer in his own name. Held a binding acknowledgment by a duly authorized agent within the meaning of s. 19, explanation 2 of Act XV of 1877. *HEMOHAND KUBER v. VOHORA RAJI HAJI*

I. L. R., 7 Bom., 515

68. ———— *Signature by agent.*—An application by a judgment-debtor in writing for the postponement of a sale in execution of a decree and the issue of fresh notification of sale signed by the pleader expressly authorized to make it is an acknowledgment "signed" by an "agent duly authorized in the judgment debtor's behalf" within the meaning of s. 19, Act XV of 1877. *RAMHIT RAI v. SATGUR RAI*

[I. L. R., 3 All., 247]

69. ———— *Petition filed on behalf of minor by vakil accompanied by part payment of money due under decree.*—A petition filed on behalf of a minor by his vakil, admitting liability and accompanied by part payment of the money due under a decree, was held to be an acknowledgment of liability sufficient to prevent execution being barred. *Taree Mahomed v. Mahomed Mabood Bux*, I. L. R., 9 Calc., 730, referred to. *NORENDRA NATH PAHARI v. BHUPENDRA NARAIN ROY*

[I. L. R., 23 Calc., 374]

70. ———— *Admission of liability contained in a memorandum of appeal in a different suit—Admission necessary for the pleadings in suit—Authority of advocate or vakil.*—An admission made by an advocate or duly authorized vakil on behalf of his client in a memorandum of appeal in a case not *inter partes*, that a certain decree was a subsisting decree capable of execution, will amount to an acknowledgment within the meaning of s. 19 of Act XV of 1877 so as to give a fresh starting point to limitation for execution of such decree, provided that such admission was necessary for the purposes of the pleadings in the former case. *Sed quare*—Whether such admission will have a similar effect if it was not necessary for the purposes of the suit in which it was made. *Ram Hit Rai v. Satgur Rai*, I. L. R., 3 All., 247, followed. *HINGAN LAL v. MANSA RAM*

I. L. R., 18 All., 384

71. ———— *Manager of joint Hindu family—Agent, Authority of—Principal and agent.*—The relation of the managing member of

LIMITATION ACT, 1877—continued.**1. ACKNOWLEDGMENT OF DEBTS—continued.**

a Hindu family to his co-parceners does not necessarily imply an authority upon his part to keep alive, as against his co-parceners, a liability which would otherwise become barred. The words of s. 20 of Act IX of 1871 must be construed strictly, and the manager of a Hindu family as such is not an agent "generally or specially authorized" by his co-parceners for the purpose mentioned in that section. *KUMARASAMI NADAN v. PALA NAGAPPA CHETTI*

I. L. R., 1 Mad., 385

72. ———— *Manager of Hindu family—Authority to revive barred debt.*—The manager of a Hindu family has the same authority to acknowledge as he has to create debts on behalf of the family, but has no power, without special authority, to revive a claim, already barred by limitation, against the family. *CHINNAYA v. GURUNATHAM*

[I. L. R., 5 Mad., 169]

See *GOPAL NARAIN MOZOOMDAR v. MUDDO-MUTTY GOOPTEE*

14 B. L. R., 21

73. ———— *Manager of a joint Hindu family—Authority to acknowledge a family debt.*—The manager of a joint Hindu family has authority to acknowledge the liability of the family for the debts which he has properly contracted, so as to give a new period of limitation against the family from the time the acknowledgment is made. He is an agent duly authorized in this behalf within the meaning of s. 19 of the Limitation Act. *Chinnaya Nayadu v. Gurunatham Chetti*, I. L. R., 5 Mad., 169, approved and followed. *BIASKEN TATYA SHET v. VIJALAL NATHU*

[I. L. R., 17 Bom., 512]

74. ———— *Manager of joint family—Power of manager to revive a time-barred debt.*—The manager of a Hindu family has no power to revive by acknowledgment a debt barred by limitation, except as against himself. *DINKAR v. APPAJI*

[I. L. R., 20 Bom., 155]

75. ———— *Authority of guardian to acknowledge debt due by minor.*—A guardian has authority to acknowledge a debt on the part of the minor, provided that the debt is not barred by limitation at the date of the acknowledgment. *Chinnaya v. Gurunatham*, I. L. R., 5 Mad., 169, followed. *Wajilun v. Kadir Buksh*, I. L. R., 13 Calc., 295, disapproved. *SOBHANADRI APPA RAU v. SRIRAMULU*

[I. L. R., 17 Mad., 221]

KAILASA PADIAOCHI v. PONNUKANNU ACHI

[I. L. R., 13 Mad., 456]

76. ———— *Authority of guardian to acknowledge debt on behalf of minor—Agent.*—A guardian has no authority to acknowledge a debt on behalf of his ward so as to give the creditor a fresh start for the period of limitation, as he is not an agent on the part of his ward within the meaning of s. 19 of the Limitation Act (XV of 1877). *Sothanadri Appa Rau v. Sriramulu*, I. L. R., 17 Mad., 221, dissented from. *RANWALSINGJI v. VADILAL VAKHATCHAND*

I. L. R., 20 Bom., 61

LIMITATION ACT, 1877—continued**1 ACKNOWLEDGMENT OF DEBTS—continued**

58. ———— *Acknowledgment signed by agent*—Under s 4 Act XIV of 1859 an acknowledgment in writing, signed by the agent or constituted attorney of the debtor, is not sufficient
PURSHOTAM MANCHARAM & ABDUL LATIF

[8 Bom, O. C, 67]

RUDRMOHOSUN BOSE & ENAETH MOONSHEE

[8 W. R, 1]

59. ———— *Powers of sarbarakar—Authority of agent—Collector, Notice by, as acknowledgment of debt—Evidence, Admissibility of—Parol evidence*—A debtor, since deceased had executed a bond to his creditor. The heir of the debtor having been disqualified and a sarbarakar of the estate having been appointed the latter had executed a mukhtarnamah or power of attorney

not having been appointed guardian of the heir could have made such an acknowledgment herself

ETAWAH**I. L. R, 17 All, 193****[L. R, 22 I. A, 31]**

61. ———— The plaintiff sued three

LIMITATION ACT, 1877—continued.

1. ACKNOWLEDGMENT OF DEBTS—continued
 bring the case within s 4 of Act XIV of 1859.
ICVARA DAS & RICHARDSON. 2 Mad, 84

date on which the debt was contracted is not for the recovery thereof is under Act IX of 1871 in time, if instituted within three years from the date of the last acknowledgment. Discussion as to who is an

MOHESH LAL & BUDUNT KUMAREE**[I. L. R., 6 Calc, 340. 70 L. R., 121]**

63. ———— *Acknowledgment by agent*—Held upon the evidence in the case that an acknowledgment of the debt sued for had not been signed by an agent of the defendant generally or specially authorized in that behalf within the meaning of s 20 Act IX of 1871. Whatever general authority such agent may once have had from the defendant it had ceased within the knowledge of the plaintiff at the time of the signature. Special authority in that behalf cannot be proved by secondary evidence of the contents of a letter, the non production of which is not satisfactorily accounted for
DINOMONY DEBI & ROY LUCHMIT SINGH

[L. R. 7 I. A, 8]

64. ———— *Acknowledgment by agent*—Signature—B's agent under the orders of B, wrote a letter to S containing an acknowledgment in respect of a debt. This letter was headed as follows:

65. ———— *Payment of part of judgment debt by debtor and acknowledgment of his liability by pleader*—The payment of part of the

LIMITATION ACT, 1877—continued.**1. ACKNOWLEDGMENT OF DEBTS—continued.**

as receiver to the estate of *S* instituted a suit on the 11th July 1898 against the defendants to recover the sum of Rs. 2,808-13-2, a portion of the said sum being the rent of a house occupied by the defendants at Mandalay since January 1894 till the 11th July 1898, the remaining portion being the price of goods sold by the defendants as agents of *S*. It was contended by the defendants that the plaintiff's claim to rent prior to July 1894 was barred. The plaintiff submitted that the letters written by the defendants to the plaintiff within three years of the institution of the suit agreeing to pay as per account enclosed by them to the plaintiff was a sufficient acknowledgment to save the claim for rent from being barred. Held that the plaintiff's claim for the portion of rent claimed beyond three years was not barred; the defendants' letters were a sufficient acknowledgment to save limitation; there being an admission that there was an open account between the parties, and that there was a right to have it taken, implied a promise to pay. *Prance v. Simpson*, 1 Kay, 678, and *Banner v. Berridge*, L. R., 18 Ch. D., 254, referred to. *FINK v. BULDE DASS*

[I. L. R., 26 Calc., 715
3 C. W. N., 524]

87. ————— sch. II, art. 110—*Contract Act (IX of 1872), s. 25, cl. (3)*—*Promise to pay a barred debt.*—In defence to a suit for rent a tenant pleaded that a portion of the claim was barred by limitation. Plaintiff relied on a letter which had been signed by defendant, after the disputed portion had become barred, and in which the defendant, after referring to the periods in respect of which the arrears of rent were due, said "I shall send by the end of Vysakha month." Held that the document contained the ingredients required by s. 25, cl. (3), of the Contract Act, and that the claim was not barred by limitation. A document sufficiently complies with s. 25 of the Contract Act when it is signed by the person to be charged, and refers to the debt in such a way as to identify it, and contains a promise to pay wholly or in part the debt referred to therein, or expresses an intention to pay which can be construed to be a "promise." To create a "promise" within the meaning of the section, it is not necessary that there should be an accepted proposal reduced to writing, a written proposal, accepted before action, becoming by the definition clause a promise when accepted. The words of the section show that it is the debt and not a sum of money in consideration of the barred debt that the promisor should refer to. *APPA RAO v. SURYAPRAKASA RAO*

[I. L. R., 23 Mad., 94]

88. ————— *Admission of debt being due in writing itself.*—To bring a case within s. 4, Act XIV of 1859, the writing must contain within itself an admission that a debt is due, and oral evidence is not admissible to add to its meaning. *LUTCHUMANAN CHETTY v. MUTTA IBRAKI MARAKAYAR*

5 Mad., 90

89. ————— *Oral evidence.*—The want of an admission or acknowledgment in writing, as

LIMITATION ACT, 1877—continued.**1. ACKNOWLEDGMENT OF DEBTS—concluded.**

required by s. 4, Act XIV of 1859, to qualify the limitation prescribed by cl. 9, s. 1 of that Act, cannot be supplied by oral evidence of the admission of the debt sued for. *GIREE DHAREE SINGH v. KALIKA SOOKUL. DOORGA DUTT SINGH v. KALIKA SOOKUL*

[7 W. R., 46]

WOOMA SOONDERY DOSSEE v. BIRESSUR ROY

[8 W. R., 289]

90. ————— *Contents of acknowledgment of debt, Secondary evidence of—Evidence Act (I of 1872), s. 91.*—Para. 2, s. 19 of the Limitation Act, 1877, belongs to that branch of the law of evidence which is dealt with by s. 91 of Act I of 1872, and ought not to be read in derogation of the general rules of secondary evidence so as to exclude oral evidence of the contents of an acknowledgment which has been lost or destroyed. *SHAMBHU NATH NATH v. RAM CHUNDRA SHAHA* . I. L. R., 12 Calc., 267

91. ————— *Acknowledgment in writing—Evidence Act (I of 1872), ss. 65 and 91—Secondary evidence.*—Limitation Act, s. 19, must be read with Evidence Act, ss. 65 and 91, and does not exclude secondary evidence in cases where such would be admissible under s. 65. *Shambhu Nath Nath v. Ram Chandra Shaha*, I. L. R., 12 Calc., 267, followed. *CHATHU v. VIRARAYAN*

[I. L. R., 15 Mad., 491]

92. ————— *Registration—Non-registration of Kibala, Effect of—Act VIII of 1871, s. 17—Act IX of 1871, s. 20, cl. (c), and s. 49.*—Although, under s. 49 of Act VIII of 1871, no instrument which is "required by s. 17 to be registered shall, if unregistered, be received as evidence of any transaction affecting the property to which it relates," this provision does not prevent such an instrument being used for the purpose of showing that a fresh period of limitation has been acquired under s. 20, cl. (c), of Act IX of 1871, by an acknowledgment of a debt in writing signed by the party to be charged therewith before the expiration of the prescribed period of limitation. *NUNDO. KISHORE LALL v. RAMSOOKHEE KOER*

[I. L. R., 5 Calc., 215; 4 C. L. R., 361]

93. ————— *expln. 1—Acknowledgment in writing.*—In a suit upon a bond brought against the defendant as a principal debtor, an acknowledgment of liability as a surety only is sufficient to save limitation, with reference to s. 19, expln. 1, of the Limitation Act (XV of 1877). *UNGOVERNATED SERVICE BANK v. GRANT*

[I. L. R., 10 All., 93]

2. ACKNOWLEDGMENT OF OTHER RIGHTS.

94. ————— *Acknowledgment of title to immoveable property.*—An acknowledgment of title to immoveable property gives a new starting point for limitation under s. 19 of the Limitation Act (XV of 1877). *JAGABANDHU BHATTACHARJEE v. HARI-MOHON ROY* . I. C. W. N., 569

LIMITATION ACT, 1877—continued.**1. ACKNOWLEDGMENT OF DEBTS—continued.**

77. ———— *Acknowledgment by guardian of minor—Guardians and Wards Act (VIII of 1890), ss 27 and 29—Act XL of 1855—An acknowledgment of a debt by the guardian of a minor appointed under the Guardians and Wards Act does not bind the minor and is not such an*

See also AZUDDIN HOSSEIN v. LLOYD
[13 C. L. R., 112]

78. ———— and art 69—*Prescribed*

the money was paid LUVAR CHUNILAL ICHHARAM
v. LUVAR TRIBHOBAN LAL DAS

[I. L. R., 5 Bom., 688]

79. ———— *"Promise"—Suit on bond executed for barred debt—Contract Act, s 25, cl 3—The "promise" referred to in s 20 of Act IX of 1871 is a promise introduced by way of exception, in a suit founded on the original cause of action, and*

80. ———— *Remissory note for barred debt—Contract Act, s 25, cl 3—Act IX of 1871, s 20, cl (a), does not prevent a plaintiff from maintaining a substantive action on a promissory note passed to secure the amount due on an old note which was barred by limitation at the time of the making of the new, the plaintiff's right to bring such action being recognized by the later enactment Act IX of 1872, s 25, cl 3*
CHATUR JAGSI v. TULSI

[I. L. R., 2 Bom., 230]

81. ———— *Acknowledgment of barred decree—In the case of a decree for money payable by instalments with the proviso that in the event of default the decree should be executed for the full amount, the decree holder did not apply for execution within three years after default was*

LIMITATION ACT, 1877—continued.

1. ACKNOWLEDGMENT OF DEBTS—continued
such acknowledgment did not create a new period of limitation SHIB DAT v. KALEA PRASAD

[I. L. R., 2 All., 443]

82. ———— *Acknowledgment after period of limitation has expired—Promise to pay—Conditional promise to pay barred debt—Contract Act (IX of 1872), s 25 Where the defendant, after his debt had become barred by limitation, wrote as follows to his creditor in reply to*

failed to prove the defendant's ability to pay, the promise did not operate, and the plaintiff could not recover. WATSON v. LATES

[I. L. R., 11 Bom., 580]

83. ———— *Agent—Signature procured after determination of agency—Notwithstanding the general provisions of s 19 of the Limitation Act of 1877, by which a new period of limitation, according to the nature of the original liability, is allowed provided that the acknowledgment of liability is made in writing before the expiration of the period prescribed for the suit, a suit cannot be brought upon an acknowledgment or account stated signed by a person who has been an agent to collect rents, if*

84. ———— *Account stated—Adjusted account—Adjustment factious, Effect of—"Ruzu"—Contract Act (IX of 1872) s 25 cl 3—The "ruzu" or adjustment of an account can operate either as a revival of an original promise or as evidence of a new contract If it is to be used as an*

writing duly signed as required by the Contract Act (IX of 1872), s 25, cl 3, a bare statement of an account not being such a promise RAMJI v. DHARMA

[I. L. R., 6 Bom., 683]

85. ———— *Account stated—Promise—Balance admitted due—Baki de a—Act IX of 1872, s 25—The Gujarati words "baki de a," which*

cl 3 RANCHHODAS NATHUBHAI v. JETCHAND KHUSALOHAND

[I. L. R., 8 Bom., 905]

See RAMJI v. DHARMA [I. L. R., 6 Bom., 683]

86. ———— *Agreement to pay as per account—Acknowledgment of debt—The plaintiff*

LIMITATION ACT, 1877—continued.**2. ACKNOWLEDGMENT OF OTHER RIGHTS—continued.**

authority according to the law then in force (cl. 1, s. 21 of Regulation XXVII of 1814), and were to be considered as if his client were personally present and consenting, was a sufficient acknowledgment in writing of the mortgagor's right to redeem as provided by cl. 15, s. 1, Act XIV of 1859, and gave a fresh starting point to the mortgagor to sue for redemption within sixty years from the date of such acknowledgment. Such acknowledgment in writing need not be made directly to the party entitled, or, in other words, to the mortgagor. *ESREE SINGH v. BISHE-SHER SINGH* 3 Agra, 255

105. ———— *Acknowledgment by mooktear—Usufructuary mortgage.*—Where sixty years have elapsed from the date of a usufructuary mortgage, a suit by the mortgagor to recover possession of the mortgaged property is barred by cl. 15, s. 1, Act XIV of 1859. Where a mortgagee signed a mooktearnama, in which he stated that he would abide by any arguments which might be urged, and any documents which might be filed, by the mooktear thereby appointed, and the mooktear subsequently filed a written statement signed by himself alone, in which he admitted the mortgagor's title, *Held* that the mooktearnama and written statement could not be read together as amounting to an acknowledgment sufficient to satisfy the requirements of cl. 15, s. 1, Act XIV of 1859. *LUCHMEE BUKSH ROY v. RUNJEET RAM PANDAY*

[13 B. L. R., P. C., 177: 20 W. R., 358

S. C. in lower Court 12 W. R., 443

See *RAHMANI BIBI v. HULASA KUAR*

[I. L. R., 1 All., 642

106. ———— *Acceptance of sale certificate—Acknowledgment of title.*—The acceptance of a sale certificate granted by a Zillah Court in 1824 to the purchaser of a mortgagee's interest in land sold by auction in satisfaction of a decree is not an acknowledgment, by the purchaser, of the title of the mortgagor which will satisfy the conditions of s. 19 of the Limitation Act and give a fresh starting point from which limitation will run for redemption. *AMBALA VAYERI MANAKEL RAMAN SOMATAJIPAD v. NADUVAKAT KRISHNA PODUVAL*

[I. L. R., 6 Mad., 325

107. ———— *Suit for redemption of mortgage—Limitation Act (XIV of 1859), s. 1, cl. (15)—Acknowledgment—Secondary evidence—Beng. Reg. IV of 1793.*—In a suit instituted on the 20th of February 1893 to redeem a mortgage executed on the 17th October 1788, it must be first seen whether the suit was barred under Act XIV of 1859, inasmuch as, if it was so barred, nothing in the subsequent Acts could revive it. Where sixty years have elapsed from the date of an usufructuary mortgage, a suit by the mortgagor to recover possession of the mortgaged property is barred unless it can be shown that there is an acknowledgment signed by the hand of the mortgagee himself to take the case out of the operation of the Act. *Luchmee Buksh Roy v. Runjeet Ram Panday*, 13 B. L. R., 177.

LIMITATION ACT, 1877—continued.**2. ACKNOWLEDGMENT OF OTHER RIGHTS—continued.**

followed. A mere statement in a plaint or written statement, which is not proved to have been signed by the mortgagees, and which, under Bengal Regulation IV of 1793, was not required to be so signed, does not amount to an acknowledgment within the meaning of the above rule. *SUNDER DAS v. FATI-MULUNISSA* 1 C. W. N., 513

Upheld on appeal to Privy Council in *FATI-MATULNISSA BEGUM v. SUNDAE DAS*

[I. L. R., 27 Cal., 1004

L. R., 27 I. A., 103

4 C. W. N., 585

108. ———— *New period—Revival of barred suit—Plaint—Receipt—Decree—Agent—Vakil—Mortgage—Redemption.*—The plaintiff's ancestor mortgaged a piece of land to the defendants' ancestor in 1797, and placed him in possession as agreed upon. Three years afterwards both the mortgagor and the mortgagee went out of the country. The mortgagor returning first resumed possession of the land; the mortgagee returning afterwards filed a suit in 1826 to recover possession under the terms of the mortgage, and obtaining a decree in his favour, possession was restored to him by the Civil Court in 1827. When taking delivery of the possession from the Court, the mortgagee passed to the officers of the Court a receipt in which the mortgagee acknowledged having received possession of the mortgaged land as directed by the decree. The plaintiff, the representative of the original mortgagor, on the 4th of December 1880, sued the defendant, the representative of the original mortgagee, to redeem the land. *Held* that the suit was barred; the receipt incorporating the decree by reference did not operate as an acknowledgment of a mortgage subsisting in 1827, so as to give to the mortgagor a new period of limitation under s. 19 of Act XV of 1877. This section intends a distinct acknowledgment of an existing liability or jurat relation, not an acknowledgment without knowledge that the party is admitting anything. *DHARMA VITHAL v. GOVIND SADYALKAR*

[I. L. R., 8 Bom., 99

109. ———— *and art. 148—Redemption of mortgage—Acknowledgment of the mortgagor's title signed by mortgagee's agent.*—*Held*, following the decision of the Privy Council in *Luchmee Buksh Roy v. Runjeet Ram Panday*, 13 B. L. R., 177, under Act XIV of 1859, that an acknowledgment of the title of the mortgagor or of his right of redemption signed by the mortgagee's agent is not sufficient under art. 148, sch. II of Act IX of 1871, to create a new period of limitation. *RAHMANI BIBI v. HULASA KUAR*

[I. L. R., 1 All., 642

110. ———— *Acknowledgment of title prior to Act XIV of 1859.*—In a suit for redemption of landed property the plaintiffs, representatives of the mortgagors, relied on an acknowledgment of the mortgagors' title contained in an entry in the settlement records of the year 1841, which was attested by the representatives of the mortgagees,

LIMITATION ACT, 1877 *continued*ACKNOWLEDGMENT OF OTHER RIGHTS
—continued—

95 ———— *Landlord and tenant—*
Acknowledgment of different tenancy— Where a
landlord sued to recover arrears of rent due from a

land as mulc or perna estate last u u

96 ———— *Mortgage—Right to redeem*
mortgage— Where a mortgagee has not legally been

97 ———— *Suit for redemption of*
mortgage—Acknowledgment— A mortgage deed
having been executed in 1761 and a acknowledgment
of the mortgagee's right to redeem having been
made in writing in 1838—*Held* that a suit to
redeem in 1888 was barred. The words in the
instrument in cl 15 of s 1 of the Limitation Act
(XIV of 1859) mean within sixty years from the
date of the mortgage. *Vasudavan Nambudr v*
Mussa Kutt 6 Mad 139 followed. *Doackand*
v Sarfraz Ali I L R 1 All 420 dissented from
MUKKANNI v MANNAN I L R 5 Mad. 182

KAMMANA KALLACHERI LEATH VASSUDAVAN
NAMBUDRI v CHEMBRAKANDY MUSSA KUTTY
[6 Mad 138]

MAHOMED ARDOOL PUZZAH AS v ALI SHAH
[3 N W 119]

NARAIN LALL v LALLA NUNDI ISHORE LALL
[19 W R 78]

98 ———— *Limitation Act*
s 21 and sch II art 148—*Limitation Act (XIV*
of 1859) s 1 cl 15 Right of redemption of mort
gage—Acknowledgment of title of mortgagee—

BALMAKUND I L R 18 All 468

99 ———— *Acknowledgments*

LIMITATION ACT 1877—*continued*ACKNOWLEDGMENT OF OTHER RIGHTS
—continued—

MYLAPORE ITASAVMY V YAPOORY MOODLIAR v
YEO KAY I L R 14 Cal 801
[L R 14 I A 168]

100 ———— *Acknowledgment made*
to third party— A written acknowledgment by the
mortgagee of the title of the mortgagee or of his
right of redemption was sufficient within the mean-
ing of cl 15 of s 1 Act XIV of 1859 though
made to a third party and not the person entitled to
the land. *DUR GOPAL SINGH v KASHMERAM PANDAY*
[3 W R 3]

acknowledgment in writing signed by the mortgagee
sufficient. *ANILLOJI PALAD KHANDOJI v*
DONGAR HARICHAND GUJAR 5 Bom A C 176

UNICRA KHANDYIS KUNHI KUTTI NAIR v VALIA
PIDIGAILI UNHAMED KUTTY MANACCAR

[4 Mad 359]

ALI HOSSEIN v RAMDYAL 3 N W, 78

answer in original suit. *U s u u u u u*
the judgment in that suit although the right to

the title of a mortgagee
particular person or at any particular time before the
instigation of the suit in which the borrower pleaded
NARBAINA TANTHI v ULKOMA 6 Mad 267

103 ———— *Entry necessary but not*
Acknowledgment An entry in a *wajbul ras*

104 ———— *Acknowledgment by*
asker— A solemn and *bond fide* acknowledgment in
writing of the mortgagee and right of the mortgagee
made by the mortgagee for the purpose of a suit
through his *asker* whose act and statement for the
purpose of the suit were within the scope of his

2. ACKNOWLEDGMENT OF OTHER RIGHTS

DIGEST OF CASES.

(4554)

119.

Application for execution of decree.—The provisions of s. 19 of the Limitation Act, 1877, are not applicable to applications in execution of decrees. The ruling of the Allahabad Full Bench in *Ramhit Rai v. Satgur Rai*, I. L. R., 3 All., 247, dissented from. *RAMA R. VENKATESA* I. L. R., 5 Mad., 171

120.

Application for execution of decree.—An application for the execution of a decree is an application in respect of a "right" within the meaning of s. 19, Act XV of 1877, and a petition made by a judgment-debtor, and signed by his vakil, praying for additional time for payment of the amount of a decree, constitutes an "acknowledgment of liability" within the meaning of that section, and a new period of limitation should be computed from the date of such petition in order to ascertain whether the execution of the decree is barred or not under the provisions of art. 179, sch. II of the Limitation Act. *Ramhit Rai v. Satgur Rai*, I. L. R., 3 All., 247, and *Ram Coomar Kur v. Jakur Ali*, I. L. R., 8 Calc., 716, followed. *TORRE MAHOMED v. MAHOMED MAHBOOB* [I. L. R., 9 Calc., 730; 13 C. L. R., 91]

121.

Execution of decree—Part-payment—Act of 1877, s. 20, and sch. II, No. 179.—A decree for money, dated the 24th June 1878, directed that a certain instalment should be paid on the 22nd July 1878, and a like instalment on the 20th December 1878, and the balance by certain instalments commencing from a certain date, and that, in case of default, the decree-holder might realize the whole of the decree. The instalments were not paid at the fixed dates, but part-payments of the amount of the decree were made by the judgment-debtor from time to time out of Court. On the 7th May 1879, he made a part-payment and an endorsement of the decree to the following effect: "I, G. Ramhit Rai, debtor of this decree, have myself paid the sum of Rs. 100 towards the decree in full, and have endorsed this payment on the decree in my handwriting." On the 5th September 1881, the decree-holder applied for execution of the whole of the decree. Held by the Court that the application was barred by the rule contained in s. 19 of the Limitation Act, 1877; that the endorsement made by the judgment-debtor on the decree was an acknowledgment of liability under the decree; and that consequently the period of limitation for the application should be computed from the time such endorsement was made, and the application was therefore within time. *Ramhit Rai v. Satgur Rai*, I. L. R., 3 All., 247, followed, but with doubt. *Per MAHMOOD, J.*—That following the *ratio decidendi* in *Ramhit Rai v. Satgur Rai*, I. L. R., 3 All., 247, the part-payment made and endorsed on the decree by the judgment-debtor fell within the terms of s. 20 of the Limitation Act, 1877. *Asmutullah Dalal v. Kally Churn Mitter*, I. L. R., 7 Calc., 56, distinguished. Also *per MAHMOOD, J.*—That it was doubtful whether in this case the decree-holder was bound to execute the whole decree when the first default occurred, as

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the terms of the decree appeared to give the holder an option in the matter, and therefore the application for execution was barred. It was made more than three years after *Shib Dat v. Kalka Prasad*, I. L. R., 2 Cal., 100, distinguished. *JANKI PRASAD v. GHULAM* [I. L. R., 5 A. and art. 179—

122.

Acknowledgment in writing—Authority to sign a decree.—On the 7th of December 1877, a decree was made for the payment of the amount of a decree, the 24th of March 1878, was granted to the judgment-debtor upon a petition signed by his vakil. On the 4th of December 1880, a fresh application for execution was made. Held that it was not barred under art. 179, sch. II of Act XV of 1877, inasmuch as the petition constituted an acknowledgment of liability under s. 19 of the same Act, and a new period of limitation began to run from the 7th of December 1877. The object of the words "application in respect of any property or right" in s. 19 is to extend to the applications mentioned in sch. II the same privilege as is accorded to suits. *Ramhit Rai v. Satgur Rai*, I. L. R., 3 All., 247, approved of. *RAM COOMAR KUR v. JAKUR ALI* [I. L. R., 8 Calc., 716; 10 C. L. R., 613.]

123.

Execution of decree—Adjustment of decrees—Certification—Civil Procedure Code, s. 258.—*Acknowledgment in writing.*—In the course of proceedings in execution of a decree, dated the 14th June 1878, the parties, on the 11th January 1881, entered into an agreement, which was registered and filed in the Court executing the decree. The deed recited that the decree was under execution, and that a mortgage-bond, dated the 1st December 1873, in favour of the judgment-debtor by a third party, had been attached and advertised for sale, and that the decree-holder and judgment-debtor had arranged the following method of satisfying the decree: That the judgment-debtor should make over the said bond to the decree-holder, in order that he might bring a suit thereon at his own expense against the obligor, and realize the amount secured by the bond, and out of the amount realized satisfy the decree under execution, with costs and future interest, together with all costs of the suit to be brought against the obligor, and together with a sum due by the judgment-debtor to the decree-holder under a note of hand for Rs. 250 with interest; and other details which need not be stated. On the same day that this deed was executed, the decree-holder filed a petition in the Court, to the effect that under the agreement an arrangement had been made for payment of the judgment-debt by which the judgment-debtor made over to him the bond advertised under it at his own cost against the obligor, and realized the debt due under the decree in execution with interest and costs; and he prayed that the sale to be held that day might be postponed, and the application for execution struck off for the present, and the previous attachment maintained, and stated that, after realization of

LIMITATION ACT, 1877—continued.**2 ACKNOWLEDGMENT OF OTHER RIGHTS**
—continued

defendants in the suit and the lower Courts having

111 ——— *Suit for redemption of mortgage—Acknowledgment of title of mortgagor or of his right to redeem*—Where the defendants attested as correct the record of rights prepared at a settlement with them of an estate in which they were described as mortgagees of the estate, but which did not mention the name of the mortgagor—*Held* (SPANKIE J dissenting) that there was an acknowledgment of the mortgagor's right to redeem within the meaning of art 143, sch II, Act IX of 1871 *Per* PRABHOO, J.—That there was also an acknowledgment of the mortgagor's title *Per* SPANKIE J *contra* DAIA CHAND & SAEFRAZ ALI **I L R, 1 All, 117**

But see *MUKRANTI v MANAN BHATTA*

[I L R, 5 Mad, 182]

112 ——— *Suit for redemption of mortgage—Acknowledgment of title of mortgagor or of his right to redeem*—An acknowledgment to be within the meaning of art 143, sch. II, Act IX of 1871, must be an acknowledgment of a present existing title in the mortgagor. An acknowledgment of the original making

is not a sufficient acknowledgment within the meaning of that article so as to prevent limitation from operating *RAM DAS v BIRJUNDUN DAS alias LALOO BASOO*

[I L R, 9 Calc, 616 12 C L R, 284]

113 ——— *Acknowledgment of*

acknowledgment under s 19 *UPPI HAJI v MAN-
NAYAN* **I L R, 16 Mad., 366**

LIMITATION ACT, 1877—continued**2 ACKNOWLEDGMENT OF OTHER RIGHTS**
—continued

114 ——— *Execution of decrees—Petition*—S 4, Act XIV of 1859 is not applicable to the execution of decrees. Thus an incidental mention on by a judgment-debtor in a petition filed by him in another case in which another decree holder had taken out execution that he owed money to the decree holder in the present case, was held not to be an admission within the meaning of that section to keep the decree alive. *LUCHMUN KOOHWAR v LUCHMUN BHORUT* **7 W. R., 79**

115 ——— *Execution of decrees—Petition*—The word "debt" in s 20 of Act IX of 1871 applies only to a liability for which a suit may be brought and does not include a liability for which judgment has been obtained therefore, where the last application for execution of a decree

made on the 21st of April 1876, that further execution was barred by limitation *KALLY PROSONNO HAZRA v HBERA LAL MUNDLE*

[I L R, 2 Calc, 468]

116 ——— *Execution of decrees—Petition*—An application was made for execution of a decree against the heir of the judgment-debtor on the 28th July 1871. On the 30th November of the same year the debtor applied by petition for two months' time. *Held* that the petition was not an acknowledgment within the meaning of s 20 of Act IX of 1871 so as to save limitation. *Kally Prosonno Hazra v Heera Lal Mundle, I L R, 2 Calc, 468*, followed *ISHANA DABIA v GRIFA KANT LAHRY CHOWDHRY* **S C L R, 572**

117 ——— *Acknowledgment in writing of debt by judgment debtor*—An acknowledgment in writing of a debt by a judgment-debtor is not such an acknowledgment as is contemplated by Act IX of 1871, s 20 and will not therefore

DHRY **I L R, 4 Calc, 708**

118. ——— *Execution of decrees—Acknowledgment in writing*—An application for the

LIMITATION ACT, 1877—continued.

expiration of the period prescribed for the repayment of the loan. **TARINEY CHURN NUNDY v. ABDUR ROHOMAN** **2 C. L. R., 346**

5. ———— Payment of interest—Payment made before Act came into operation.—The exception of payment of interest contained in s. 21, Act IX of 1871, is not confined to payments made after that Act came into force, but applies also to payments made before that date. **TEAGARAYA MUDALI v. MARIYAPPA PILLAI**

[I. L. R., 1 Mad., 264]

6. ———— Bond—Payment of interest—Adjustment of accounts.—Suit to recover the principal sum and one year's interest due on a bond, dated the 11th March 1866. By the terms of the bond the rent of certain land was assigned to the lender as security for interest. No date was specified in the bond for the payment of the principal sum. The interest was regularly paid up to October 1871, and the present suit was brought in June 1874. *Held*, on special appeal, by **HOLLOWAY, J.**, that assuming that the period of limitation was three years, and that it had run out both before action brought and before Act IX of 1871 came into operation, s. 21 of that Act operated to save the action; that at the period of that law coming into force there was still a contractual right existing, and that the right of action was restored by the payment of interest. **Venkatachella Mudali v. Sheshagherri Rau, 7 Mad., 283, and Mokatailla Naganna v. Pedda Narappa, 7 Mad., 288, distinguished.** *Held* by **MORGAN, C.J.**, that no question of limitation arose. That the lender having been constituted by the bond a trustee and receiver of the rents and profits of land, it was only on an adjustment of his accounts that the principal became payable. **VALIA TAMBRATTI v. VIRARAYAN** **I. L. R., 1 Mad., 228**

7. ———— Payment of interest—Contract in writing.—The defendant at different times made payments to the plaintiff, who was his creditor, in reduction of the general balance of account against him, but without intimating that any of such payments was to be appropriated in satisfaction of the interest due on his debt. *Held* that there had been no payment of interest, "as such," by the defendant so as to bring the case within cl. 1 of s. 21 of the Limitation Act (IX of 1871), and that the plaintiff's claim was barred. **HANMANTLAL MOTICHAND v. RAMBABAI** **I. L. R., 3 Bom., 198**

8. ———— Receipt of rent—Payment of interest—Mortgage.—In 1858 land was mortgaged to the plaintiff with possession for a term of five years, and in 1861 the defendant, the mortgagor, took a lease of the land from the plaintiff under which he paid rent until 1870-71. The mortgage-debt was repayable on the expiry of the term. Plaintiff brought the suit out of which this appeal arose to recover the debt from the mortgagor. It was pleaded that the suit was barred by limitation, to which plaintiff replied that the receipt of rent was in fact a payment of interest, and that from the last payment of interest a new period of limitation arose. *Held* that the case being governed by the provisions

LIMITATION ACT, 1877—continued.

of Act IX of 1871, the payment of rent under an agreement entirely independent of the original mortgage could not be regarded as a payment of interest. **UMMER KUTTI v. ABDUL KADAR**

[I. L. R., 2 Mad., 185]

9. ———— Payment of interest—Prescribed period—Extension of period.—The words "prescribed period," used in s. 20 of the Limitation Act, 1877, mean the period prescribed by the Act. The contention that only one extension of the period of limitation is given by payment of interest is unfounded. **VENKATARATNAM v. KAMAYYA**

[I. L. R., 11 Mad., 218]

10. ———— Payment of interest—Entry on account of interest in debtors' books in presence of plaintiff.—The plaintiffs, who were members of the Dalvadi community, sued in 1883 to recover from the defendant the sum of Rs. 2,611-3-6 as found credited to their account in 1880 by the defendants' father, with whom the community had lodged a sum of Rs. 2,320 in 1874. They alleged that the sum was lodged on the condition that it was to be returned with interest on demand. It appeared that small sums were paid by K to the plaintiffs from time to time, and entries of interest were made in the defendants' books as being credited to the plaintiffs. The defendants contended that the suit was barred. For the plaintiffs it was contended that the entry of interest in the defendants' book was made in the plaintiffs' presence and amounted to a payment of interest within the meaning of s. 20 of the Limitation Act (XV of 1877). *Held* that such an entry did not amount to payment of interest within the meaning of the section so as to save limitation. Nothing took place which could be regarded as equivalent to payment of interest. **ICHINA DHANJI v. NATHA** **I. L. R., 13 Bom., 338**

11. ———— Payment of interest as such—Mortgage—Payment of rents to mortgagee in lieu of interest on debt—Deed of assignment showing payment of rent in lieu of interest—Admissibility of deed in evidence—Registration Act (III of 1877), ss. 3 and 17.—By a bond, dated the 15th July 1872, A assigned to B the "vahiut of assessment" of certain lands belonging to him as security for a loan of Rs. 10,000. The bond provided that B should receive the assessment, and, after making certain payments, should retain the balance in lieu of interest until the principal debt should be repaid. The bond was not registered. The assessment was duly received by B until April 1897. In February 1890, B filed this suit to recover the principal sum from A personally, relinquishing his claim against the land, as the bond was not registered. A pleaded limitation. B contended that the receipt of the assessment in lieu of interest was a payment of "interest as such" within the meaning of s. 20 of the Limitation Act (XV of 1877), and that the last of such payments having been made within three years before suit, his claim was not barred. *Held* that the suit was barred by limitation. The assignment of the "vahiut of assessment" contained in the bond was an assignment of a benefit arising out of immoveable property within the meaning of s. 17

LIMITATION ACT, 1877—continued**2 ACKNOWLEDGMENT OF OTHER RIGHTS**
—concluded

sale
On
ruch
the
24th December 1883 the decree holder applied for
execution of the decree alleging that the judgment
debtor had failed to make over the bond to his accord

terms of s 19 of the Limitation Act so as to originate
a fresh period of limitation in respect of the execution
of the decree *Ghansham v Mukla* I L R 3
All 320 *Janki Prasad v Ghulan Ali* I L R
5 All 201 and *Rambh t Rai v Satgur Rai* I L
R 3 All 247 followed *FATEH MOHAMMAD v*
GOPAL DAS I L R, 7 All, 424

124 ————— Decree partly in favour
of plaintiff and partly in favour of defendant—

to R13 8-6 The appellate decree was passed on
the 6th June 1889 On the 18th December 1891

him The lower Courts were of opinion that the
application in 1895 by the defendant was not barred
by limitation by reason of the plaintiff's applications
in 1892 and 1894 which they held to be an acknow

s 20 (1871, s 21)

1 ————— Case under Punjab Code
before Limitation Act 1859—In a case under the

described as a running account and were therefore
part payments which amounted to a partial satis
faction of demand whereby the period of limitation on

LIMITATION ACT, 1877—continued

was renewed *MUKKUM LALL v IMTIAZ OOD*
DOWLAH

[5 W. R., P C, 18 1 Ind Jur N S, 142
10 Moore's I A, 382

See *GOWRA BEEBE v HISSEY MISSEB*
[1 Ind Jur, N S, 224

and *POSITPANUN SEN v CHUNDER CAUNT MOO*
KERJEE 1 Ind Jur, N S, 329

Under the Act of 1859 part payment was not an
admission of a debt though evidenced by writing
MUHAMMAD JANULA v VEKATANAYAR 2 Mad, 79

ICVARA DAS v PICHARDSON 2 Mad, 84

KRISTINA ROW v HACHAPA SUGAPA
[2 Mad, 307

MADHO SINGH v THAKOOR PERSHAD
[5 N W, 35

2 ————— Prescribed period—Two of
the sons out of a joint Mitakshara family consisting
of a father and three sons and the widow and sons of
a deceased son and carrying on business in partner
ship sued to recover money due on a bath chitta dated
11th December 1876 the last payment made and
on 11th Dec 1876 the last payment made and

described as surviving partners of the deceased son
At the time the additional plaintiffs were made
parties the suit was as regards them barred by
limitation Held that the suit if all the plaintiffs
had originally joined in suit would not have been
barred by s 20 of Act XV of 1877 The words
prescribed period in that section mean not the
period prescribed for the payment of the debt but the
prescribed period of limitation *RAMSEKUR v PAM*
LAL KOONDOD I L R, 6 Calc, 815
[8 C L R., 457

IN THE MATTER OF *MONGOLA KOIBORTO v*
ANNODA RAM 12 C L R, 277

See *LUVAR CHUNILAL ICHHARAM v LUVAR TRI*
BHOVAN LALDAS I L R, 5 Bom, 688

3 ————— Part payment of principal

of principal or interest as the case may be so as to
extend the period of limitation under s 20 of the
Limitation Act (XV of 1877) *RAGHO SHIVARAM v*
HARI I L R, 24 Bom, 619

4 ————— Payment of interest—S 21
of Act XV of 1871 has no application where the pay
ments of interest admitted were made after the

LIMITATION ACT, 1877—continued.

17. ———— *Mortgage—Suit for arrears of rent.*—Where a kanom was granted in 1858 for five years to secure repayment of a loan, and a lease made in 1861 to the grantor of the kanom by the kanom-holder and rent paid under the lease until 1871,—*Held* that a suit brought in 1877 to recover the kanom amount and arrears-of rent for seven years was barred by limitation except as to three years' arrears of rent. **PALLIAGATHA UMMAI KUTTI v. ABDUL KADAR** I. L. R., 3 Mad., 57

18. ———— *Entry of account stated by debtor in creditor's books—Implied contract.*—An entry of an account stated, made by a debtor in his creditor's books, is not a contract in writing within the meaning of Act IX of 1871, s. 21. **AMRITHAL MANSUK v. MANIKAL JETHA** [10 Bom., 375

This case was followed in **HANMANTMAL MOTICHAND v. RAMBABAI** I. L. R., 3 Bom., 198

where it was held that, consequently, the payments made by the defendant on account were not such payments of the principal of the debt due by him as would bar the operation of the Act.

See **RAMCHODDAS NATHUBHAI v. JEYCHAND KHUSAL CHAND** I. L. R., 8 Bom., 405

19. ———— *Payments towards adjusted account.*—Where, subsequently to the adjustment of his account with the plaintiffs, the defendant had been credited with amounts of surplus proceeds of goods and of a hundi, held that such amounts were not payments within the meaning of s. 20 of the Limitation Act. **NARROJJI BHIMJI v. MUGNIRAM CHANDAJI** I. L. R., 6 Bom., 103

20. ———— *Sum realized by execution sale—Part-payment.*—A sum realized by an execution-sale cannot be considered a part-payment under s. 21, Act IX of 1871, so as to give a new period of limitation. **RUGHONATH DOSS v. SHROMONER PAT MOHADEBEE** 24 W. R., 20

BEMUL DOSS v. IKBAL NABAIN 25 W. R., 249

RAMCHANDRA GANESH v. DEVBA

[I. L. R., 6 Bom., 626

21. ———— *Part-payment of principal of bond—Endorsement, Facts which must appear in.*—To satisfy the conditions of s. 20 of the Limitation Act, the endorsement in the handwriting of the person making a part-payment of the principal of a bond need not show the appropriation of the payment to principal, but only the fact of the payment. **JADA ANKAMMA v. NADIMPALLE RAVA** [I. L. R., 6 Mad., 281

22. ———— *Part-payment of principal—Endorsement—Handwriting of payer—Marksmen.*—In s. 20 of the Limitation Act, 1877, the condition that the fact of payment in the case of part-payment of the principal of a debt must appear in the handwriting of the person making the same, is satisfied if the payer signs or affixes his mark beneath an endorsement not written by him. **MADABHUSHI SESHACHAREU v. SINGARA SESHAYA**

[I. L. R., 7 Mad., 55

LIMITATION ACT, 1877—continued.

23. ———— *Part-payment of principal—Endorsement—Handwriting of payer—Marksmen.*—The mark of the payer subscribed to an endorsement not in the handwriting of the payer will satisfy the proviso to s. 20 of the Limitation Act, 1877, which requires that the fact of the payment of part of the principal of a debt made by the debtor or his agent duly authorized in that behalf shall appear in the handwriting of the person making the payment, in order that a new period of limitation may run from the date of such payment. **ELLAPA NAYAK v. ANUMATI GOUNDAN**

[I. L. R., 7 Mad., 76

24. ———— *Part-payment of principal of debt—Endorsement of cheque by debtor.*—Where the only evidence in the handwriting of the debtor of the part-payment of the principal of a debt was the endorsement of a cheque to the creditor,—*Held* that such endorsement did not satisfy the conditions of s. 20 of the Limitation Act so as to give rise to a new period of limitation from the date of such endorsement. **MACKENZIE v. THIRUVENGADATHAN**

[I. L. R., 9 Mad., 271

25. ———— *Part-payment of principal of debt—"Person making the same"—Mode of creating new period of limitation by part-payment.*—In order to create a new period of limitation under the proviso to s. 20 of the Limitation Act (XV of 1877), the fact of part-payment of the principal of a debt must appear in the handwriting of the person making the part-payment, and not in that of any other person, however authorized. **Bhugabuth Thakur v. Madhub Kristo Sett, I. L. R., 23 Calc., 553 note**, overruled. **MUKHI HAJI RAHMUTULLA v. COVERJI BHUJA** I. L. R., 23 Calc., 546

Contra, **BHUGABUTH THAKUR v. MADHUB KRISTO SETT** I. L. R., 23 Calc., 553 note

26. ———— *Part-payment of principal of debt.*—An insolvent in debt to a Bank had given a promissory note for the full amount of the debt due. He also gave, by way of collateral security for the promissory note and for any future advances, a letter of lien over his stock-in-trade, etc., and undertook at the time to execute, whenever called upon to do so, an assignment of his business. This undertaking was never carried out. Two years and three months from the date of the loan, the insolvent had addressed a letter to the Bank enclosing a cheque for Rs 600, and requesting that it should be placed to the credit of the loan account. *Held* that the payment of Rs 600 was a part-payment, and that the fact of such part-payment appeared in the handwriting of the insolvent within the meaning of s. 20 of the Limitation Act. **IN THE MATTER OF SUMMERS**

[I. L. R., 23 Calc., 592

27. ———— *Part-payment of debt—Endorsement of hundi by debtor.*—Where the only evidence in the handwriting of the debtor of the part-payment of the principal of a debt was the endorsement of a hundi to the creditor,—*Held* that such endorsement was not sufficient within the meaning of s. 20 of Act XV of 1877 to give a new starting point for limitation. **Mackenzie v. Tiruvengadathan**,

LIMITATION ACT, 1877—continued

and 3 of 1877
mortgag
be adm
But it
that th
was to
be to admit indirectly the provisions of the bond
in evidence Apart from the bond there was no

(I L R, 19 Bom, 683

12 ——— Payment of interest on a debt—Authority of a previous guardian of a debtor

and as a guardian in interest on the 6th after he had
attained majority and less than three years before the
institution of the suit *Held* that the mother and

PADIACHI: PONNUKANNU ACHI

(I L R, 18 Mad, 456

13 ——— Payment of interest as such—Credit of interest made in accounts of defendants—In a suit brought by a creditor against certain persons to whom she had lent money on interest—*Held* that in order to save the bar of limitation a mere credit of interest entered in the accounts of the defendants was not a sufficient payment of interest as such under s 20 Limitation Act to save the bar KOLIPARA PULLAMMA v MADDULA TATAYYA I L R, 19 Mad 340

14 ——— Acknowledgment of liability—Interest paid on debt—Contribution—Joint debtors—By a payment into Court under an order on account of decree for rent and revenue in arrear due to the landlord zamindar from the joint owners of an under tenure their estate was saved

interest to creditors from whom had been borrowed the money for the payment into Court Whilst the three years from the date of that acknowledgment were running and at a date less than three years before this suit interest on part of the money borrowed had been paid by the manager whom the appellant jointly with the other co-owners of the estate

LIMITATION ACT, 1877—continued

had authorized as her agent to pay it *Held*

MONI CHOWDHURANI: ISHAN CHUNDER ROY

(I L R 25 Calc, 844

I L R, 25 I A, 95

2 C W N, 402

15 ——— Payment of interest as such—Settlement of accounts—To satisfy the requirements of s 20 of the Limitation Act (XV of 1877) the payment of principal or interest as such need not be in money It may be in goods or by a settlement of accounts between the parties but the payment must be of such a nature that it would be a complete answer to a suit brought by the creditor to recover the amount Where a debtor consents that money due by him for interest should be credited to the account of the principal and the interest balance reduced by that amount such a consent is really tantamount to a payment of interest it is as if the debtor makes the payment and the creditor advances it again When both parties agree to such a settlement and the accounts are so adjusted the adjustment operates as a payment of interest under s 20 of the Limitation Act (XV of 1877) Plaintiffs used to lend money to the defendants firm The accounts of the dealings between the parties were settled from time to time On the occasion of each settlement the interest was calculated up to the date of the settlement and the amount found due was credited to the interest account and debited to the account of the principal in the creditors' books,

16 ——— Suit for money—Payment on account of principal within the period of limitation—Evidence of such payment by writing made after period expired—The obligor of a registered mortgage bond dated the 30th January 1875 sued in February 1891 to recover from the obligor the principal and interest remaining due thereunder In bar of limitation the plaintiff relied on entries of part payments from time to time in an account written by the defendant These part payments

at on for the suit) before the date of institution of the suit but it was not entered in the defendant's accounts until after the date when the claim would otherwise have been barred by limitation *Held* that the provisions of the Limitation Act s 20 were satisfied and that the suit was not barred by limitation. VENKATASUBBU v APPUSUNDARAM

(I L R, 17 Mad, 92

LIMITATION ACT, 1877—continued.

KALEE KISHORE CHATTERJEE v. LUCKHEE
DEBIA CHOWDHURANI . . . 6 W. R., 172

3. ———— *Act XIV of 1859—Suit by widow on behalf of minor son—Son afterwards joined as plaintiff.*—In 1864, a Hindu widow having a minor son sued, in her own name and on her own behalf, to recover certain immovable property. The action was brought on a lease which expired in 1854. The defendant denied the lease, and contended that the suit should be dismissed, as it could not be maintained by the widow in her own name. In 1871, the son, who had in the meantime attained his majority in 1865, was made a co-plaintiff on his own application. *Held* that the suit was barred, inasmuch as it must, if maintainable, be deemed to have been instituted in 1871, when the son was made a co-plaintiff, the plaintiff previously to that time having been in the widow's own name and expressly on her own behalf. *Held* also that making the son a co-plaintiff in 1871 could not change the character of the suit as it had existed previous to that date, so as to defeat the law of limitation. *Held* (by PINHEY, J.) that the minor was wrongly made a plaintiff in 1871. *Dhurm Dass Pandey v. Sham Soondri Dabiah*, 6 W. R., P. C., 44, distinguished. *GOPAL KASHI v. RAMA BAI SAHEB PATVAR* . . . 12 Bom., 17

4. ———— *Act IX of 1871, s. 1 and s. 22—"Commenced," "Instituted"—Added defendants—Suit for contribution or partnership account—Cause of action.—Quære—Whether the word "commenced" in s. 22 of Act IX of 1871 is equivalent to the word "instituted" in s. 1, and whether s. 1 does not exclude from the operation of the Act all suits instituted before 1st April 1873, even as to defendants added after that date. Supposing the provisions of s. 22 of Act IX of 1871 to apply to defendants added by amendment subsequently to 1st April 1873, in a suit instituted before that date, such added defendants will, under the terms of that section, and if that section does not apply, then under a general principle of law, be allowed to reckon the period of limitation on which they rely from the date at which they were added, but the periods of limitation provided by Act IX of 1871 do not necessarily apply to defendants so added. The plaintiff and three of the defendants, being four members of a partnership, consisting of seven persons, borrowed, in January and February 1865, on account of the partnership, from the Commercial, Finance, and Stock Exchange Corporation, two sums of Rs. 21,614 and Rs. 1,08,000, for which they gave their joint and several promissory notes, and shortly afterwards two of the partners retired, leaving the plaintiff and the four defendants alone constituting the firm. On 27th September 1865, the plaintiff and first defendant were sentenced to transportation for life, and on 1st April 1867 one of the other defendants became insolvent. On 25th April 1867, the liquidators of the Commercial, Finance, and Stock Exchange Corporation obtained a decree against the plaintiff and the three defendants who had joined in the making of the promissory notes for the amount due on their joint and several promissory*

LIMITATION ACT, 1877—continued.

notes and costs. In March 1868, the immovable and moveable property of the plaintiff and the moveable property of the first defendant were sold in execution, and the whole of the proceeds of the plaintiff's immovable property, together with the balance of the proceeds of the moveable properties of the plaintiff and first defendant, after satisfying thereout two prior decrees against them, were applied in part satisfaction of the decree of 25th April 1867, and the moneys so recovered were distributed to the shareholders by the liquidators, who, however, retained in their hands such portion as would have been payable in respect of the shares held by the judgment-debtors, and thus the whole decree was satisfied, leaving a balance of Rs. 25,212. The distribution of assets was made on 3rd April 1869, and the final dividend to shareholders other than the judgment-debtors paid on 3rd August 1869. The two defendants other than the first and the insolvent took the benefit of Act XXVIII of 1865, and obtained their discharge in April and December 1869. The plaintiff therefore sued the first defendant alone on 18th March 1873 as contributory for the satisfaction of the joint decree, but subsequently, by amendment made on the 6th February 1874, added the other defendants, and prayed for a decree that he was entitled to receive and appropriate the balance of Rs. 25,212, and that the first defendant should pay to the plaintiff the balance of the moneys paid by him in excess of his share in satisfying the decree of 25th April 1867, with interest, after deducting three-fourths of the sum of Rs. 25,212, on that, if necessary, the partnership accounts might be taken, and the plaintiff be paid such sums as might be found to be due to him. *Held*, first, that the period of limitation as to all the defendants was that provided by Act XIV of 1859, whether the suit was to be treated as one for a partnership account, or one for contribution of an ascertained sum. Second, that as to the first defendant, the period of limitation was to be reckoned back from 18th March 1873. Third, that as to the added defendants, the period of limitation was to be reckoned back from 6th February 1874. Fourth, that the plaintiff's cause of action arose in April 1868, when his property was sold and applied in satisfaction of the joint decree of 25th April 1867, and not on the date of the decree itself. *DAYAL JAIRAJ v. KHATAY LADHA* . . . 12 Bom., 97

5. ———— *Substitution of heirs of decree-holder.*—In a suit to set aside the sale of certain lands which had been attached and sold by a decree-holder as the property of his debtor, plaintiff brought his action against the decree-holder and a party whom he supposed to be the auction-purchaser. Subsequently, finding that his supposition had been erroneous, he applied to have real purchaser made a party, and the heirs of the decree-holder (who had died) substituted as defendants. *Held* that the suit against the heirs was not barred by lapse of time, as it was originally brought within the period of limitation against the decree-holder, of whose death the plaintiff first learnt the news from the return made to the summons. *SURE KISHEN CHOWDHURY v. RAY KISTO BHUTTACHARJEE* . . . 10 W. R., 317

LIMITATION ACT, 1877—continued

I L R, 9 Mad 271 referred to *PAM CHANDAN*
c CHANDI PRASAD *I L R, 19 All, 307*

28 ————— *Unregistered mortgage—*
Receipt of produce in lieu of interest—Receipt of
the produce of land held under a deed of mortgage

29 ————— *Agent, Authority of, to*

LALL c RUDRA PERKASH MISSE
[I L R, 17 Calc, 944]

————— s 21 (1871, s 20, expl. 2, 1853, s 4)

1. ————— *Acknowledgment by partner*
 —An acknowledgment by one partner sufficient to
 save limitation will not bind another partner who
 has not subscribed such acknowledgment *BENARSEE*
DASS c KHOOHAL CHUND KHOOHAL CHUND c
PALMER 2 *Agra, Pt II, 170*

2. ————— *Partnership accounts—*
 s 20, Act IX of 1871 do not apply to partnership
 accounts *KHOODEE LAM DUTT c KISHEN CHAND*
GOLFECHA 25 *W. R, 145*

3. ————— *Acknowledgment given by*

LIMITATION ACT, 1877—continued

expressly authorized to act for the other partners in
 making the acknowledgment. The meaning of the
 word "only" in s 21 of the Limitation Act (XV of
 1877) is that it must also be shown that the partner
 signing the acknowledgment had authority express
 or implied to do so. In a going mercantile concern
 such agency is to be presumed as an ordinary rule
PRESMI LUDHA c DOSSA DOONGERSEY

[I L R, 10 Bom, 358]

4. ————— *Acknowledgment signed by*
one of several partners—The word only in s 21
of the Limitation Act (XV of 1877) is not to be
treated as a surplusage. It means that the mere
writing or signing of an acknowledgment by one
partner does not necessarily of itself bind his co-
partner unless it can be shown that he had other-
wise power to bind that partner for the purpose of
making such acknowledgment and in effect purported
so to bind him *GADU BIBI c PARSOTAM*

[I L R, 10 All, 418]

————— s 22 (1871, s 23)

See FALSE IMPRISONMENT

[I L R, 9 Bom, 1]

See PARTIES—ADDING PARTIES TO SUITS

—PLAINTIFFS *I L R 14 All, 524*

[I L R, 17 Bom, 39, 413]

See PARTIES—ADDING PARTIES TO SUITS

—RESPONDENTS *I L R, 13 All, 78*

[I L R, 14 All, 154]

See PLAINT—AMENDMENT OF PLAINT

[I L R, 16 Mad, 319]

1. ————— *Party added under s 73*
Civil Procedure Code 1859—When a party was
substituted or added as a defendant under s 73 of
Act VIII of 1859 the suit was held to be commenced
against him at the time and not before. Therefore,
where A sued B as representative of C for land and
more than twelve years after the cause of action
accrued found that B was not in possession but D,
and by order of Court D was substituted as defend-
ant—Held the claim against D was barred *RAJ*
KISHORE DOSSEE c BUDDEN CHUNDER SHAW
[2 Ind Jur, N S, 49 8 W R, 298]

NUNDU GOPAL ROY c JANKEERAM CHUCKER
BUTTY *W R, 1864 318*

ESHAN CHUNDER BANERJEE c KRISTO GUTTY
NAG *14 W R, 377*

2. ————— *Act XIV of 1859—Parties*
added after expiration of period of limitation—
A suit was held not to be barred by the Limitation
Act 1859 against parties added after the expira-
tion of the period allowed by law provided the
plaint be filed against the original parties prior to
the expiration of such period *ISSUREPERSAUD c*
URJOONLOL *2 Hyde, 248*

LIMITATION ACT, 1877—continued.

KALEE KISHORE CHATTERJEE v. LUCKHEE
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LIMITATION ACT, 1877—continued.

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5. ———— *Substitution of heirs of decree-holder.*—In a suit to set aside the sale of certain lands which had been attached and sold by a decree-holder as the property of his debtor, plaintiff brought his action against the decree-holder and a party whom he supposed to be the auction-purchaser. Subsequently, finding that his supposition had been erroneous, he applied to have real purchaser made a party, and the heirs of the decree-holder (who had died) substituted as defendants. *Held* that the suit against the heirs was not barred by lapse of time, as it was originally brought within the period of limitation against the decree-holder, of whose death the plaintiff first learnt the news from the return made to the summons. *SREE KISHEN CHOWDHURY v. RAM KISTO BHUTTACHARJEE* . . . 10 W. R., 317

LIMITATION ACT, 1877—continued

6 ——— and art 60—*Adding party as defendant*—On 2nd August 1872, *A K* filed a plaint against *M H* and *M R*, in which he alleged that on 1st April 1870 *M R* had given a hundi for Rs500 for value received to

A K that the hundi had been lost. *A K* accordingly prayed that the defendants *M H* and *M R* might be decreed to pay him Rs531 with profit and interest. *M H* denied that he had purchased the hundi from *A K* who he alleged, had given the hundi to *I H* for the purpose of getting it cashed. *M R* admitted that he had executed the hundi and had given it to *A K* for Rs500. He further alleged that it had

law of limitation. *I H* was concerned was sch II, art 60 of that Act and that therefore, if the payment by *M R* to *I H* were not proved to have been made within three years before 20th June 1874 the day on which *I H* was added as a defendant the suit against him was barred. *Dayal Javraj v Akbar Ladha*, 12 Bom, 97 and *Chinnasami Iyengar v Gopalacharry 7 Mad*, 392 dissented from *ABDUL KARIM v MANJI HANSRAJ* I L R, 1 Bom, 295

But see *ISSURAPERSAUD v URJOOV LALL*
[2 Hyde, 248]

7 ——— *Adding plaintiffs whose*

8 ——— *Parties—Civil Procedure Code, ss 27 and 32—Institution of suits—Change of parties*—The change of parties as plaintiffs in conformity with the provisions of s 27 of the Civil Procedure Code does not give rise to such a question of limitation as arises upon the addition of a new person as a defendant under s 32. *SUBODINI DEBI v CUMAR GANODA KANT ROY RAHADUR*
[I L R, 14 Calc, 400]

9 ——— *Joint purchase—Suit against one of the purchasers—Addition of other purchaser as defendant—Effect of suit as regards the latter being barred by limitation*—F, on the

LIMITATION ACT, 1877—continued

ment, dated the 1st May 1880 *A* was made a defendant to such suit *Z* being appointed guardian for the suit for him. Held that, inasmuch as such suit, as regards *A* was beyond

10 ——— *Adding defendant after suit barred*—A suit for property in the possession of several persons was brought by the plaintiff against one of those persons only. After the institution of the suit and after the period of limitation prescribed for a separate suit on the same cause of action against the other persons in possession had elapsed these latter were added as defendants. Held that the suit must be dismissed as against the added defendants on the ground that it was barred by limitation. *OSBOY CHURN NUNDI v KHITAR-THANNOYI DOSSEE* I L R, 7 Calc, 284

11 ——— *Suit for partnership accounts—Joint contract—Necessary parties Omission of—Addition of new defendant—Time of joinder, how material*—A suit was brought for partnership accounts. Upon the objection of the

12 ——— *Parties—defendants sub-*
suit was rightly dismissed. *RAMDOHAL v JUMMEN JOY COONDHO* I L R, 14 Calc, 791

their written statements produced that the plaintiff

LIMITATION ACT, 1877—continued.

13. ——— *Parties to suit—Transfer of defendants to category of plaintiff, Effect of—Land Registration Act (Beng. Act VII of 1876), s. 7.*—*A and B, two joint zamindars, having brought a patni within their zamindari to sale for arrears of rent, purchased it themselves. During the existence of the patni a dar-patni had been created of which C was in possession. A instituted a suit against C to recover arrears of rent of the dar-patni for a period of three years, and joined B as a pro forma defendant, alleging that he was away from home at the time of the institution of the suit, and could not therefore join as co-plaintiff. A's proprietary interest was registered under the provisions of Bengal Act VII of 1876, the Land Registration Act, but B's interest was not so registered. Prior to the suit coming on for hearing, but after the right to recover the rent for the first two out of the three years had become barred by limitation, assuming no suit to have been brought, B was transferred from the category of defendant in the suit into that of co-plaintiff. In answer to the suit, C pleaded limitation, and also contended that the non-registration of B's interest precluded the plaintiffs from maintaining the suit at all (A's share not being specified), having regard to the provision of s. 78 of the Land Registration Act. The lower Appellate Court having dismissed the suit on this latter ground, and also held that the right to recover the rent for the first two out of the three years as suit was barred by limitation, —Held that, when B was sued as a party-defendant, he was made a party in violation of the rule applied in *Dwarka Nath Mitter v. Tara Prasanna Roy, I. L. R., 17 Cal., 160*, and that the suit was not therefore in the first instance properly brought. B not being properly on the record at all, that the effect of making B co-plaintiff was practically to institute a new suit on the date when he was so changed into co-plaintiff, and that the suit had been rightly dismissed on the ground of limitation so far as the rent of the first two years was concerned, but that the plaintiffs were entitled to a decree for the rent in respect of the third year which was not barred by limitation at the time B was made co-plaintiff. *JIBANTI NATH KHAN v. GOKOOL CHUNDER CHOWDRY. I. L. R., 19 Cal., 760**

14. ——— *Parties changed from defendants to plaintiffs.*—The plaintiff claiming to be entitled, together with two of the defendants, to the office of archaka of a temple, sued in 1889 for a declaration of his title, and for a declaration that an agreement entered into by them in 1886 with the other defendants was void as having been executed under coercion, and because part of the consideration was the withdrawal of a pending criminal charge of trespass and theft against them. These averments were proved. The first-named defendants were made plaintiffs in the suit more than three years after the execution of the agreement. Held that the first plaintiff was entitled to a declaration of the invalidity of the agreement, but not the others who had been joined as plaintiffs more than three years from its date. *SRIKANGACHARIAR v. RAMASAMI AYYANGAR [I. L. R., 18 Mad., 189]*

LIMITATION ACT, 1877—continued.

15. ——— *Suit by heirs of deceased Mahomedan—Suit originally filed in time by one heir—Another heir subsequently made co-plaintiff beyond time of limitation—Letters of administration obtained only by second plaintiff—Parties, Joinder of.*—The plaintiff, as widow and heir of a Khoja Mahomedan, sued on a promissory note, dated the 21st October 1892, passed by the defendant to her deceased husband. The suit was filed on the 9th October 1895. Disputes subsequently arose between her and her father-in-law as to the succession to her husband's property, and she applied to the High Court for letters of administration. On the 9th September 1896, the plaintiff's father-in-law, on his application, was made a co-plaintiff in the suit. Subsequently the plaintiffs came to terms, and the widow withdrew her application for letters of administration, and her father-in-law applied for and obtained letters of administration instead. On the 14th November 1896, the suit came on for hearing. The first plaintiff did not produce any letters of administration or certificate under the Succession Certificate Act (VII of 1889). The second plaintiff produced the letters of administration obtained by him. Held that the suit was barred by s. 22 of the Limitation Act (XV of 1877). When the second plaintiff was added as a party, the suit was barred as against him. If the letters of administration had been obtained by the first plaintiff, her suit would not have been barred, and the Court could have passed a decree in her favour. S. 22 of the Limitation Act in terms applies as well to plaintiffs suing in their representative capacity as in their personal capacity. Held also that the second plaintiff was properly joined as a party plaintiff. When one or more heirs sue, there is no objection to joining all to make the representation complete. *FAT-MABAI v. PIRBHAI VIRJI. I. L. R., 21 Bom., 580*

16. ——— *Civil Procedure Code (Act XIV of 1882), s. 27—Suit by benami purchaser at sale in execution of decree—Addition of real purchaser as co-plaintiff.*—The plaintiff Ravji as owner of certain land brought this suit on the 31st January 1894 for damages for loss of crops and in respect of loss caused by the defendant's obstructing him in cultivating the land. The dates of the causes of action set forth in the plaint were, respectively, the 12th September 1891, the 12th March 1892, February 1892, and 12th October 1892. In the course of the proceedings, the defendant ascertained that Ravji was not the real owner of the land, but had purchased it and was holding it benami for his uncle. Ravji admitted that he had no interest in the land. On the 30th March 1895, Ravji's uncle applied to be made a party to the suit, and was thereupon added as second plaintiff. The Subordinate Judge on the merits passed a decree awarding damages to the second plaintiff. The defendant appealed, and in appeal for the first time objected that Ravji (plaintiff No. 1), being only a benamidar, could not bring the suit in his own name, and that the claim of the second plaintiff, or a large portion of it, was barred by limitation under s. 22 of the Limitation Act. The District Judge reversed the decree on the point

OWN ACT, 1877—continued

11 dismissed suit On second ap

11 dismissed suit On second ap

LIMITATION ACT, 1877—continued

Clunder Poy I L R 8 Calc 26 dismissed of
KALIDAS KEVAL DAS v NATHU BHAGVAN
[I L R, 7 Bom, 217]

19 ————— Necessary party added
after period of limitation expired—Objection for
want of parties not taken—Where objection for

for bringing the suit had expired *Kalidas Keral-*
das v Nathu Bhagvan I L R 7 Bom 217
dismissed SHIRPURI TIMAPA HEGADE v
AJJIBAL NARASHIM HEGADE

[I L R, 15 Bom, 297]

20 ————— Addition of parties on
appeal—Civil Procedure Code 1877 ss 32 532—
S sued A and R jointly and severally for certain
moneys The Court of first instance gave S a decree
for such moneys against N and dismissed the suit

21 ————— Civil Procedure Code

against R the former not having appealed from the
decree of the Court of first instance within the time
allowed by law *RANJIT SINGH v SHEO PRASAD*
RAM I L R, 2 All, 487

21 ————— Civil Procedure Code

22 ————— Ass gnes of right of suit
—Leave to carry on suit—S 32 of Act XV of
1877 does not apply to a case in which the persons to
whom a right of suit is assigned after the institut on
of the suit obtain leave to carry on the suit
SUPUR SINGH v IMRIT TEWARI

[I L R, 5 Calc, 720 6 C L R, 62]

23 ————— Names of partners inser-

the record as defendants *11/10/1881*

11877 did not therefore deprive plaintiff No 1
rights or create a new period of limitation as
held by the lower Court of Appeal *PATJI APPAJI*
CHAKARNI v MAHADEV BAPAJI KULKARNI

[I L R, 22 Bom, 672]

17 ————— Suit for damages for illegal
distrain—Joinder of parties—Party plaintiff
joined beyond period of limitation—A suit for
compensation for illegal distrain of crops was

suit in his own sole name to recover a joint debt
When the objection was taken to the form of the suit
on the ground of the non joinder of A's three
brothers it was too late to add them as co-plaintiffs
by reason of s 22 of the Limitation Act (XV

and therefore had *Boydonth Bag v Grish*

LIMITATION ACT, 1877—continued.

the Limitation Act refers to cases where a new defendant is substituted or added, and that, when the partners of the Elgin Mills Company were brought on the record as defendants in January 1883, there was no institution or addition of new defendants, the defendants having been comprised in the designation of Elgin Mills Company, and at most what was done was to correct a misdescription. *PRAGI LAL v. MAXWELL*. . . I. L. R., 7 All., 284

24. ——— *Assignment pendente lite—Substitution of assignees as plaintiffs.*—In a suit instituted within the period prescribed by the law of limitation the plaintiff assigned over his interest, and the assignees were substituted on the record in the place of the original plaintiff after the said period had expired. *Held* that, under s. 22 of the Limitation Act (XV of 1877), the suit was barred by limitation. *Suput Singh v. Imrit Tewary*, I. L. R., 5 Calc., 720, distinguished. *HARAK CHAND v. DENONATH SAHAY, BHAGBUT PROSAD SINGH v. DENONATH SAHAY*. . . I. L. R., 25 Calc., 409

25. ——— *Partnership—Non-joinder of parties—Suit in name of a firm by its manager—Addition of name of other partner as co-plaintiff—Misdescription of plaintiff—Civil Procedure Code (Act XIV of 1882), s. 27—Amendment of plaint.*—This suit was brought to recover a debt due to the firm of *K S*. The plaintiff was described as "the firm of *K S* by its manager *S S*." The defendants objected that one *M* was a partner in the firm and should be a party to the suit; he was joined as a co-plaintiff on the 27th January 1888. The defendants then contended that the suit was time-barred under s. 22 of the Limitation Act. *Held* that the case was one of misdescription, and not of non-joinder, for the action was brought in the name of the firm by its manager. The order of the words in the vernacular plaint showed that *S*, the manager, did not sue in his own name. The defendants were entitled to have the name of the other partner disclosed, but it being found as a fact that *S* was entitled to sue for the firm, the addition of *M*'s name on the record came within the provisions of s. 27 of the Civil Procedure Code. *KASTURCHAND BAHIRAYDAS v. SAGARMAL SHRIRAM*. . . I. L. R., 17 Bom., 413

26. ——— *Suit by Official Liquidator—Description of plaintiff—Civil Procedure Code, s. 53—Amendment of plaint.*—In a suit to recover a debt to a company which had gone into liquidation, the plaintiff was described in the plaint as "The Official Liquidator, Himalaya Bank, Limited, in liquidation," and the plaint was signed and verified in the same terms. On objection taken by the defendant, the plaint was allowed to be amended, but after the period of limitation prescribed for the suit had expired, so as to read "The Himalaya Bank, Limited, in liquidation, plaintiff." *Held* by the Full Bench that the plaint, as originally filed, was in substantial compliance with the provisions of Act VI of 1882; and that, even if it might be considered that the amendment made was necessary, such amendment did not introduce a new plaintiff into the suit so as to lie in the operation of s. 22 of Act XV of 1877. *Ghulam Muhammad v. Himalaya*

LIMITATION ACT, 1877—continued.

Bank, I. L. R., 17 All., 292, overruled. *In re Winterbottom, L. R., 18 Q. B. D., 446*, distinguished. *MUHAMMAD YUSUF v. HIMALAYA BANK* [I. L. R., 18 All., 198]

27. ——— *Defendant added by Court of its own motion—Civil Procedure Code (1882), s. 32.*—No question of limitation arises, and s. 22 of the Limitation Act does not apply, when the Court of its own motion acts under s. 32 of the Code of Civil Procedure, and orders that the name of any person be added as a defendant. *Grish Chunder Sasmal v. Dwarka Nath Duida*, I. L. R., 24 Calc., 640, and *Oriental Bank Corporation v. Charriol*, I. L. R., 12 Calc., 642, followed. *Khadr Moideen v. Rama Naik*, I. L. R., 17 Mad., 12, referred to; and *Imamuddin v. Liladhar*, I. L. R., 14 All., 524, dissented from. *FAKERA PASBAN v. AZIMUNNISA* [I. L. R., 27 Calc., 540 4 C. W. N., 459]

28. ——— *Municipalities Act, N. W. P. and Oudh, s. 43—Suit against Secretary to Municipal Committee—Substitution of President as defendant.*—Where, after a notice required by s. 43 of Act XV of 1873 had been left at the office of a municipal committee, such committee were sued within three months of the accrual of the plaintiff's cause of action in the name of their secretary, instead of the name of their president, as required by s. 40 of Act XV of 1873, and the plaintiff applied to the Court more than three months after the accrual of his cause of action to substitute the name of the president for that of the secretary. *Held* that, by reason of such substitution, such suit could not be deemed to have been instituted against such committee when such substitution was made, s. 22 of Act XV of 1877 applying to the case of a person personally made a party to a suit, and not to the case of a committee sued in the name of their officer, and that such substitution, when applied for, should have been made. *MANNI KASAUNDEAN v. CROOKE*

[I. L. R., 2 All., 296]

29. ——— *Non-joinder of parties—Application to join necessary parties made within period of limitation refused by Court of first instance—Application granted by Court of Appeal, but after period of limitation—Order to add parties operating nunc pro tunc—Delay the act of the Court.*—The plaintiffs, as sharers in certain rent alleged to be due by the defendants, sued to recover their share. The defendants contended that all the co-sharers were necessary parties. At the hearing on the 24th January 1889, the plaintiffs' co-sharers applied to be made co-plaintiffs and to be allowed to adopt what the plaintiffs had done in the suit. The application was rejected, and the suit was dismissed for want of parties. On appeal, the District Court in July 1890, holding that the lower Court ought to have joined the co-sharers, passed an order making them co-plaintiffs, and then confirmed the lower Court's decree on the ground that at the time (3rd July 1890) the co-sharers were made plaintiffs, the suit was barred by limitation. On appeal to the High Court, *Held*, remanding the case, that the

LIMITATION ACT, 1877—continued

Court acting under s 7 of the Civil Procedure Code *Bho'a Pershad v Ram Lall*, I L R, 24

17. ——— Suit for damages for illegal distraint—Joinder of parties—Party plaintiff joined beyond period of limitation—A suit for compensation for illegal distraint of crops was

provisions of s 22 of the Limitation Act *JAGDEO SINGH v. PADARATH AHIR* I L R, 25 Cal., 285

18. ——— Joinder of persons as plaintiffs after period of limitation for suit has expired—Frame of suit—Parties—A, who with his three

by reason of s 22 of the Limitation Act (XV

LIMITATION ACT, 1877—continued

Chunder Roy, I L R, 8 Cal 26, disapproved of *KALIDAS KEVAL DAS v NATHU BHAGVAN* [I L R, 7 Bom, 217

19. ——— Necessary party added after period of limitation expired—Objection for want of parties not taken—Where objection for want of parties jointly interested in the subject matter of the suit was not taken by the defendants at any stage of the proceedings, nor was an issue framed upon the point, — Held that the parties jointly interested with the plaintiff might be added, and that the suit should proceed, although the said parties were added after the period of limitation for bringing the suit had expired *Kalidas Keraldas v Nathu Bhagvan* I L R, 7 Bom, 217, distinguished *SHREEKULI TIMATA HEGADE v AJJIBAL NARASHIM HEGADE*

[I L R, 15 Bom, 297

20. ——— Addition of parties on appeal—Civil Procedure Code, 1877, ss 32, 582—S sued N and R jointly and severally for certain moneys. The Court of first instance gave S a decree

S to have preferred an appeal having then expired, and eventually reversed the decree of the Court of first instance, dismissing the suit as against N and giving S a decree against R. Held that, although the Appellate Court was competent to make R a party to the appeal under ss 32 and 582 of Act X of 1877, yet it was not competent, with reference to s 22 of Act XV of 1877, to give S a decree

21. ——— Civil Procedure Code

Procedure Code, s 32 *KHADIR MOIDDEY v RAMA NAIK* I L R, 17 Mad, 12

22. ——— Assignee of right of suit—Leave to carry on suit—S 22 of Act XV of 1877 does not apply to a case in which the persons to whom a right of suit is assigned after the institution of the suit obtain leave to carry on the suit. *SUPUT SINGH v IMBIT TEWARI*

[I L R, 5 Cal, 720; 6 C. L. R, 62

23. ——— Names of partners inter-

the record as defendants *Hindustan v. Hindustan*

LIMITATION ACT, 1877—continued.

Whether in case of a refusal by a wife of full age to a demand made by her husband, that she should return to him, a suit by him for her recovery is barred under art. 35 of sch. II of the Limitation Act, or falls within the purview of s. 23 as based on a continuing cause of action. **PAKINGAUDA v. GANGI**

[I. L. R., 23 Bom., 307

6. ————— *Disturbance of right of ferry—Nuisance—Continuing wrong—Cause of action.*—The disturbance of a right of ferry is in the nature of a nuisance (*Yard v. Ford, 2 Saunders, 172*), and the cause of action in the case of a violation of this right is a continuing wrong within s. 23 of the Limitation Act. **NITYAHARI ROY v. DUNNE**

[I. L. R., 18 Calc., 652

7. ————— and arts. 34, 35.—*Suit for restitution of conjugal rights—Wife's refusal to return to her husband—Husband and wife.*—The refusal of a wife to return to her husband and allow him the exercise of conjugal rights constitutes a continuing wrong giving rise to constantly recurring causes of action on demand and refusal. Suits for the recovery of a wife or for the restitution of conjugal rights, though governed by arts. 34 and 35 of sch. II of the Limitation Act (XV of 1877), are not thereby taken out of the operation of s. 23 of the Act. **BAI SARI v. HIRACHAND**

I. L. R., 16 Bom., 714

HEMCHAND v. SHIV

[I. L. R., 16 Bom., 715 note

See **PINDA v. KAUNSILIA** I. L. R., 13 All., 126

s. 25 (1871, s. 26).

1. ————— *Computation of time—English calendar.*—In calculating time for the purpose of applying the law of limitation, the computation must be made according to the English calendar. In a suit brought on the 5th Assar 1273 (3rd July 1866) for recovery of a sum of money for goods sold and delivered, the debt for which the defendant acknowledged by a writing dated 8th Assar 1270 (9th June 1863),—*Held* that the suit was barred by lapse of time. **JAY MANGAL SING v. LAL RUNG PAL SING**

[4 B. L. R., Ap., 53

S. C. JOY MUNGAL SINGH v. LALL RUNG PAL SING

[13 W. R., 183

2. ————— *Bond—Limitation Act, 1877, art. 66—Gregorian calendar.*—Where a bond, by its terms, stated that money advanced should be repaid on the 30th Pous 1283 B.S., and it so happened that in the year 1283 the month of Pous consisted only of twenty-nine days (the 29th Pous answering to the 12th January 1877),—*Held* that a suit brought on the 13th January 1880 was in time. **ALMAS BANEE v. MAHOMED RUJA**

[I. L. R., 6 Calc., 239; 6 C. L. R., 553

3. ————— *Native date—Gregorian calendar.*—Where a bond bears a native date only, and is made payable after a certain time, that time, whether denoted by the month or the year, is to be computed according to the Gregorian (British) calendar: s. 25 of Act XV of 1877. **NILKANTH v. DATTATRAYA**

I. L. R., 4 Bom., 103

LIMITATION ACT, 1877—continued.

4. ————— *Native date—Month.*—The plaintiff sued on a note, bearing a native date, Ashad Vadya 13th, Shake 1799 (7th August 1877), and containing a stipulation for payment of the money to this effect: "In the month of Kartik, Shake 1799,—that is to say, in four months,—we shall pay in full the principal and interest." The plaint was filed on the 6th December 1880 in the Court of Small Causes at Poona. The Judge was of opinion that the claim was barred. On his referring the case to the High Court for its decision, *Held* that the period of four months was, for the purpose of ascertaining whether the suit was barred by lapse of time, to be calculated according to the Gregorian calendar, under s. 25 of the Limitation Act (XV of 1877), and that the claim was not barred. **RUNGO BUJAJI v. BABAJI**

I. L. R., 6 Bom., 83

5. ————— *Computation of time—Difference in calendars—Date from which time runs.*—A registered lease provided that the rent should be paid on 30th Masi Tharana. The month Masi in the year Tharana ended on the 29th day, which corresponded with the 11th March 1885. A suit to recover the rent was filed on the 12th March 1891. *Held* that the suit was not barred by limitation. **GNANASAMMANDA PANDARAM v. PALANIYANDI PILLAI**

I. L. R., 17 Mad., 61

s. 26 (1871, s. 27).

See **PRESCRIPTION—EASEMENTS—LIGHT AND AIR** . . . 15 B. L. R., 361
[I. L. R., 14 Calc., 839

See **PRESCRIPTION—EASEMENTS—RIGHT OF WAY** . . . I. L. R., 1 Calc., 422
[I. L. R., 8 Calc., 956

See **PRESCRIPTION—EASEMENTS—RIGHTS OF WATER** . . . I. L. R., 5 Mad., 226
[I. L. R., 6 Bom., 20
I. L. R., 6 Calc., 394

See **RIGHT OF WAY.**

[23 W. R., 290, 401

I. L. R., 10 Calc., 214

1. ————— *Enjoyment "as of right"—User in assertion of right.*—The enjoyment described in Act IX of 1871, s. 27, by the words "as of right" does not mean user without trespass, but it means user in the assertion of a right. **ALIMOODDEEN v. WUZEER ALI**

23 W. R., 52.

2. ————— *Easement—Presumption of a grant.*—In a suit to establish an easement when limitation is pleaded, the proper issues to frame under s. 26 of Act XV of 1877 are—(1) whether the easement in question was peaceably, openly, and as of right enjoyed by the plaintiff, or those through whom he claims, within two years of the institution of the suit; and (2) in the event of the above issue being found in the negative, whether there is evidence of enjoyment on the part of the plaintiff, or those through whom he claims, of such a character and duration as to justify the presumption of a grant or other legal origin of the plaintiff's right independent of the provisions of Act XV of 1877, s. 26. **ACHUT MAHTA v. RAJUN MAHTA**

I. L. R., 6 Calc., 812.

LIMITATION ACT, 1877—continued

order of the lower Appeal Court of the 3rd July 1890 allowing the co-sharers' application which had been made on the 24th January 1889 but had been refused by the Court of first instance should be treated as operating *nunc pro tunc* and that the co-sharers

30 ———— *Amendment of plaint—Defendant sued in different capacity from that originally stated*—The creditor of a deceased trustee of a temple sued two persons as his successors in office to recover the amount of the debt. One of the defendants died, the other, who was the brother of the deceased pleaded that other persons were joint trustees with him and should have been impleaded with him, he also alleged that the debt in question was a private debt and had not been incurred by the deceased as a trustee. The persons named were joined as defendants and they repeated the above allegation. The plaintiff thereupon amended the plaint and prayed for a personal decree against the original

plaintiff. *Held* that the claim was not barred by Limitation. **SAMINATHA v MUTHAYYA**
(I L R., 15 Mad., 417)

— s 23 (1871, s 23)
See PRESCRIPTION—EASEMENTS—RIGHTS OF WATER I L R., 6 Bom, 20
I C W N, 86

1 ———— *Consent decree for payment by instalments*—A consent decree for payment by instalments is governed by s 23 Act IX, and on default in the payment of one instalment the whole amount becomes due. **RYGHOO NATH DASS v DHROMONEE PAT MOHADEBEE** 24 W R., 20

2 ———— *Rescission of contract—Continuing breach—Act IX of 1871 (Limitation*

Act IX of 1871)—*Held* that there had not been a continuing breach of contract within

(I L R., 10 All, 485)

3 ———— *Breach of covenant for title—Continuing breach—Covenants for quiet*

LIMITATION ACT, 1877—continued.

covenants on the part of S L, his heirs executors and administrators with B R his heirs executors, administrators and assigns for title to the hereditaments and premises hereinbefore expressed to be here by granted and assured unto and to the use of the said B R, his heirs executors administrators, and assigns" S died in the lifetime of B R who in 1867 mortgaged the premises comprised in the deed of 15th July 1865 and died in 1868. In 1870 the mortgagee sold the premises by auction under the

against the parties in possession, who relied on the

covenant for quiet possession admitting of a continuing breach was not barred so long as the

further assurance when required so to do by the covenantee or his representatives. **RAJU BALU v KRISHNARAY RAMCHANDRA**

(I L R., 2 Bom, 273)

4 ———— *Bond—Interest post date—Non-payment of principal and interest at agreed date—Continuing breach—Act XV of 1877 sec II, arts 115 116*—Upon failure to pay the principal and interest secured by a bond upon the day appointed for such payment breach of the contract to pay is committed and there is no continuing breach within the meaning of s 23 nor successive breaches within the meaning of art 115 of the Limitation Act (XV of 1877). **MUNSHI ALI v GULAB CHAND**

(I L R., 10 All, 85)

5 ———— *Suit for restitution of*

property to the wife—*Held* it was in substance a suit for the restitution of conjugal rights and art 30 of the Limitation Act (XV of 1877) applied. The demand and refusal, which form the starting point for limitation under art 35 are a demand by the husband and refusal by the wife (or vice versa) being of full age. A positive refusal by the part of the wife to return to her husband is not essential to the husband's cause of action. *Quere—*

LIMITATION ACT, 1877—continued.

right—Cessation of user—Actual user.—No rule can be laid down as to what would or would not constitute a continuance of the enjoyment as of right of a right of way, when there has been no exercise of it for any given period; that must depend upon the circumstances of each case and the nature of the right claimed. For the plaintiff to succeed in a suit for the declaration of a right of way, as acquired under s. 26 of the Limitation Act, conceding that he need not prove an actual user of the way up till the end of the statutory period of twenty years, there must, when there is no user for a long time, be circumstances from which the Court can infer the continuance of enjoyment as of right over the whole statutory period, and the cessation of the user must be at least consistent with such continuance. The enjoyment required by the Act cannot be in abeyance, and at the same time continue so as to give the plaintiff the special right claimed. The question of continued enjoyment is an inference to be drawn from facts, rather than one of fact, and if there are no facts to sustain the inference, a decision in favour of such enjoyment cannot stand. The plaintiffs sued the defendant for the declaration of a right of way, as acquired under s. 26 of the Limitation Act, over a plot of land belonging to the defendant. It was alleged that in April 1892 the defendant dispossessed the plaintiffs from the dominant tenement; and that the plaintiffs sued the defendant for recovery of possession of it under s. 9 of the Specific Relief Act, and, having obtained a decree, got possession on the 19th June 1895. It was further alleged that thereupon the defendant, on the 21st June 1895, obstructed the disputed way by erecting sheds. The present suit was instituted on the 25th November 1895. *Held* that, the enjoyment of the right of way on the part of the plaintiffs not having continued until within two years of the institution of the suit, the suit must fail. *Koylash Chunder Ghose v. Sonatun Chung Barooie, I. L. R., 7 Cal., 132, distinguished. JANHAVI CHOWDHURANI v. BINDU BASHINI CHOWDHURANI I. L. R., 26 Cal., 593 [3 C. W. N., 610]*

12. ——— *Suit to restrain co-sharer from appropriating portion of property to his own particular use.*—The Limitation Act, 1871, s. 27, does not apply to a suit to restrain one co-sharer in a joint property from appropriating to his own particular use a portion of such property without the consent of other co-sharers. *BISSAMBHAR SHAHA v. SHIB CHUNDER SHAHA 22 W. R., 28*

13. ——— *Easement—Riparian proprietors—Obstruction to flow of drainage water—Prescription—Right of action—Special damage.*—*Held* that the right of a superior riparian proprietor to have the drainage water from his lands permitted to flow off in the usual course is not an easement within the meaning of Act IX of 1871. *Held* further that the defendants, lower riparian proprietors, who had obstructed such a right of the plaintiff by blocking up the stream, could only justify their act if they had acquired an easement to do it, that their act was actionable whether special damage

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had or had not accrued, and that, so long as the obstruction was continued, there was a continual cause of action from day to day. The English law of prescription and the provisions of s. 27, Act IX of 1871, considered. *SUBRAMANIAM AYYAR v. RAMACHANDRA RAU I. L. R., 1 Mad., 335*

14. ——— *Construction of statute—Act when applicable to Crown—Easement—Profit à prendre—Right of pasturage claimed by a village against Government—Prescription—Custom.*—The rule of construction according to which the Crown is not affected by a statute unless specially named in it applies to India. *Semble*—The provisions of s. 26 of the Limitation Act (XV of 1877) do not apply to the Crown. The mere mention of the Crown in an Act has not the effect of making all its provisions applicable to the Crown, and s. 26 does not relate to the limitation of suits, but to an entirely different matter, *viz.*, the creation of rights by the enjoyment of them, which is a branch of the substantive law. The section is clearly in prejudice of the Crown's rights, and the other provisions of the Act do not afford sufficient evidence of an intention that this section should apply to the Crown. The rule of English law, that a claim to a *profit à prendre* cannot be acquired by the inhabitants of a village, either by custom or prescription, does not apply to a right of pasturage claimed by a village in the Presidency of Bombay as against the Government. The right of free pasturage has always been recognized as a right belonging to certain villages, and must have been acquired by custom or prescription. The plaintiffs, who were the inhabitants of the village of Dani Limbda, sued for themselves and the other inhabitants to establish their right to graze their cattle on the banks and the dry part of the village tank Chandola, and for a perpetual injunction restraining the defendant from interfering with such right. The defendant contended (*inter alia*) that the tank was kharabo or waste land, that it had never been set apart under the Land Revenue Code, s. 33, for grazing purposes, and that the plaintiffs could not acquire, as against the Government, a right of grazing by prescription. The Court of first instance held the defendant not excluded from the operation of s. 26 of the Limitation Act (XV of 1877), but found that there was a break in the period of prescription, and therefore rejected the plaintiffs' claim. The lower Appellate Court held that there was no break; and awarded their claim. On appeal by the defendant to the High Court,—*Held*, restoring the decree of the Court of first instance, that the suit should be dismissed. Whether the plaintiffs' claim was considered with regard to s. 26 of the Limitation Act or to the general law of prescription, it was essential that the user should have been as "of right" to graze cattle on the tank in question. But the right of free pasturage which certain villages enjoy according to the recognized custom of the country, and which was admittedly enjoyed by the plaintiffs' village, does not necessarily confer the right of pasturage on any particular piece of land, although it may confer the right of having sufficient land set apart for the purposes of the village, and in the

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3 ——— *Right of way—Easement—User as of right—Prescriptive right*—For the purpose of acquiring a right of way or other easement under s 26 of the Limitation Act it is not

the English Prescription Act ARZAN & RAKHAL CHUNDER ROY CHOWDHURY I L R, 10 Cal, 214

4. ——— *Easement—Light and air—Apertures—Enjoyment as of right*—The enjoyment by the plaintiff of light and air through apertures in the wall of his house when it is open and manifest not fictive or invisible and when it is not had in such wise as to involve the admission of any obstructive right in the owner of the adjacent tenement is an enjoyment as of right within the meaning of s 26 of Act XV of 1877 The phrase does not imply a right obtained by grant from the owner of the servient tenement MATHURADAS NANDVALABH & BAI ANTHI I L R, 7 Bom, 522

5 ——— *Prescription—Easement—Accrual of cause of action*—At any time within twenty years should injury accrue from the recur

KISHORE & MULCHAND

6 ——— *Suit for easement based on continuous user*—A suit to establish a claim to an easement based upon a continuous user for five years must with reference to s 27 be brought within two years from the end of such period LUCHME PERSHAD NARAIN SINGH & TILUCK DHAREE SINGH 24 W R, 295

7 ——— *Easement—Prescription—User—Fishery Right to—Limitation Act 1877 s 3* The word easement as used in the Limitation Act 1877 has by force of the interpretation clause (s 3) a very much more extensive meaning than the word bears in the English law for it in

law is called a *profit à prendre*—that is to say a right to enjoy a profit out of the land of another A proprietary right of fishery is an easement as defined by s 3 of the Act and may be claimed by any one who can prove a user of it—it is to say that he has of right claimed a right of enjoyment without interruption for a period of twenty years altho he does not allege and prove that he is or was in the possession of the land or occupies it of any dominant tenement CHURN ROY & SHIB CHOWDHURY I L R, 5 Cal, 845 6 C L R, 522

8 ——— *Jalkar—Easement*—Jalkar is not an easement within the meaning of s 3

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of Act IX of 1871 but is an interest in immovable property within the meaning of section II art 145 of that Act PARHUTTY NATH ROY CHOWDHURY & MODHO PAROE

[I L R, 3 Cal, 278 1 C L R, 592]

9 ——— *Dispossession—Fishery—Custom—Suit to restrain fishing in certain bails*—In a suit to restrain the defendants from fishing in certain bails which admittedly belonged to the plaintiff's zamindari it appeared that the plaintiff had let out some of the bails to ryadars who had sued the defendants for the price of fish taken by them from the bails and that the suit had been dismissed on the ground that the defendants in common with other inhabitants of the villages in the zamindari had acquired a prescriptive right to fish in the bails The defendants contended that they had been in possession of the bails for more than twelve years and that they had a prescriptive right to fish therein under a custom according to which all the inhabitants of the zamindari had the right of fishing Held that the mere fact that the defendants had trespassed and had misappropriated fish did not amount to a dispossession on the part of the plaintiff and that the suit was not barred by Limitation Parhatty, Nath Roy Chowdhury & Mulcho Paroe I L R 3 Cal 278 distinguished Held also that no prescriptive right of fishery had been acquired under s 26 of the Limitation Act and that the custom alleged could not on the ground that it

10 ——— Easement—Right of way

ment and as of right, it is a right of way before 1877 down to November 1870 it is no actual user of the way by the plaintiff taken place The lower appellate Court held that the plaintiff's right of way was not a right of way within the meaning of s 3 of the Limitation Act 1877 and that the suit was not barred by the Limitation Act 1877 s 3 The plaintiff's right of way was not a right of way within the meaning of s 3 of the Limitation Act 1877 and that the suit was not barred by the Limitation Act 1877 s 3 The plaintiff's right of way was not a right of way within the meaning of s 3 of the Limitation Act 1877 and that the suit was not barred by the Limitation Act 1877 s 3

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as accruing to him on the death of A as the only male survivor of the founder's family, by the provisions of s. 29 of the Limitation Act, IX of 1871. **MANALLY CHENNA KESAVARAYA v. MANGADU VAIDILINGA** . . . I. L. R., 1 Mad., 343

10. ——— *Adverse possession—Bar of remedy and extinguishment of right—Debts.*—The 28th section of the Limitation Act of 1877 extends the doctrine that twelve years' adverse possession of land not only bars the remedy of the rightful owner, but extinguishes his right to property other than land; but *per* GARTH, C.J.—*Quære*—Whether this principle would apply to debts. **RAM CHUNDLER GHOSAL v. JUGGUTMONMOHINEY DABEE** [I. L. R., 4 Calc., 283; 3 C. L. R., 336]

11. ——— *Operation of Limitation Act IX of 1871 and Act XV of 1877.*—The Limitation Acts (IX of 1871 and XV of 1877) merely bar the remedy, but do not extinguish the debt. **NURSING DOYAL v. HURRYHUR SAHA** [I. L. R., 5 Calc., 897; 6 C. L. R., 489]

MOHESH LAL v. BUSUNT KUMAREE [I. L. R., 6 Calc. 340; 7 C. L. R., 121]

Overruling the cases of **KRISHNA MOHUN BOSE v. OKHILMONT DOSSEE** . . . I. L. R., 3 Calc., 331

NOCOOR CHUNDER BOSE v. KALLY COOMAR GHOSE . . . I. L. R., 1 Calc., 328

and **RAM CHUNDER GHOSAL v. JUGGUTMONMOHINEY DABEE** . . . I. L. R., 4 Calc., 283

See also **VALIA TAMBURATI v. VIRA RAYAN** [I. L. R., 1 Mad., 228]

and **MADHAVAY v. ACHUDA** [I. L. R., 1 Mad., 301]

12. ——— and arts. 91 and 95—*Extinguishment of right and title—Plea of fraud—Fraudulent sale—Vendor's right to plead fraud after twelve years from the date of sale—Vendor and purchaser.*—In 1872 the plaintiffs induced the first defendant by fraud and misrepresentation to execute in their favour a deed of sale of the property in dispute. They did not pay the purchase-money nor obtain possession of the property. The defendant remained in possession, and in 1873 mortgaged the property with possession to defendants Nos. 2 and 3, and in 1880 sold it to defendant No. 2. In 1884 the plaintiffs sued for possession of the property, relying on their title under the sale-deed. The defendant impeached the deed as fraudulent and disputed the plaintiffs' title. The plaintiffs contended that, as the defendant had not sued to set aside the deed on the ground of fraud within three years, as provided by art. 91 or 95 of the Limitation Act (XV of 1877), or within twelve years from the date of sale, it was too late for him to set up the plea of fraud. *Held* (SCOTT, J., doubting) that the defendant's right to raise the plea of fraud was not barred by the law of limitation. *Per* SCOTT, J.—There was another point of limitation which could be raised. The consideration-money was never paid by the plaintiffs, and possession was never given. There was no complete contract of sale passing the property. Therefore the plaintiffs' only right was to

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sue for specific performance of the contract. Such a suit, however, became barred in three years after the date of the contract. The plaintiffs therefore had lost their rights against defendant No. 1; and even if they had not, the present claim for possession as against defendants Nos. 2 and 3 must fail, as defendant No. 2 was mortgagee and defendant No. 3 was *bona fide* purchaser for value, and no satisfactory evidence was given by plaintiffs, on whom lay the onus that these defendants had notice of the deed of sale. *Per* JARDINE, J.—S. 28 of the Limitation Act (XV of 1877) does not apply to the case of defendants, who rely on an actual possession which has never been disturbed. **HARGOVANDAS LAKHMIDAS v. BAJIBHAI JIJIBHAI** . . . I. L. R., 14 Bom., 222

13. ——— *Civil Procedure Code (1882), s. 214—Right of pre-emption asserted by one in possession under an otti mortgage in Malabar—Limitation Act, sch. II, art. 10.*—Land in Malabar was in the possession of the defendants, and was held by them as otti mortgagees under instruments executed in August 1873 and January 1876. The plaintiff, having purchased the jenm right under instruments executed and registered in May and June 1877, now sued in 1893 for redemption. *Held* that the defendants' right of pre-emption was not extinguished under Limitation Act, s. 28, and that they were not precluded from asserting it by art. 10 owing to the lapse of time, and that the Civil Procedure Code, s. 214, was inapplicable to the case, because the persons asserting a right of pre-emption were in possession. **KRISHNA MINON v. KESAVAN** [I. L. R., 20 Mad., 305]

— art. 3 (1871, art. 3; 1859, s. 15).

S. 15 of Act XIV of 1859 was repealed by, and its provisions re-enacted in, the Specific Relief Act (I of 1877), s. 9 of which is in similar terms, with the addition of the modification made in s. 15 by s. 26 of Act XXIII of 186 , and an additional provision that no such suit shall be brought against the Government.

1. ——— *Suit to recover paramba after forcible dispossession.*—S. 15 did not abridge any rights possessed by a plaintiff, but was intended to give him the right, if dispossessed otherwise than by course of law, to have his possession restored without reference to the title on which he held. Where a plaintiff sued to recover a paramba of which he alleged that he was owner and that the defendant had forcibly dispossessed him,—*Held* that the suit was not barred by s. 15. **KUNHI KOMAPEN KURUPU v. CHANGARACHAN KANDIL CHEMBATA AMBU** [2 Mad., 313]

See **KUMUL DUTT v. MOHUN MOLLA** [15 W. R., 278]

2. ——— *Unlawful dispossession by Government officers.*—When a Deputy Collector, acting as agent for a minor, uses powers which belong to the Government alone for the resumption of invalid lakhiraj tenures, and by virtue of those powers resumes lands for the benefit of the minor and unlawfully dispossesses the previous holder,—*Quære*—

LIMITATION ACT, 1877—continued

absence of special circumstances pointing to the tank in question having been used for grazing by the villagers in exercise of a right other than and independent of the aforesaid right, the user by the plaintiffs could only be referred to that general right

SECRETARY OF STATE FOR INDIA v MATHURABHAI
[I L R., 14 Bom., 213]

15 ———— *Enjoyment as of right for twenty years—Right of ownership—Right of easement as distinguished from a right of ownership—Bombay Regulation V of 1927, s 1—User—*
In order to acquire an easement under s 26 of the

Quare
if s 1 of
o the ac
would be
easement
claimed. CHUNILAL FULCHAND v MANGALDAS
GOVARDHANDAS I L R., 16 Bom., 592

——— s. 28 (1871, s 29).

See FOREIGN COURT, JUDGMENT OF
[I L R., 2 Mad., 400]

See MALABAR LAW—MORTGAGE
[I L R., 13 Mad., 490]

See ONUS OF PROOF—LIMITATION AND
ADVERSE POSSESSION
[I L R., 14 All., 193]

See POSSESSION—ADVERSE POSSESSION
[I L R., 21 Bom., 509]

See POSSESSION—EVIDENCE OF TITLE
[I L R., 1 Bom., 592]

See RES JUDICATA—JUDGMENTS ON
PRELIMINARY POINTS
[I L R., 21 Bom., 91]

1. ———— *Effect of Law of Limitation (Act XIV of 1859)—The Indian Law of Limitation (Act XIV of 1859) as to realty was held to bar the remedy, but not to extinguish the right* DOB v KULLAMMAL KUPPU v PILLAI
[1 Mad., 85]

VENKOPADHYAYA v KAVARI HENGUSU
[2 Mad., 36]

3 ———— *Limitation in relation to persons in undisturbed possession—Delay—The law of limitation operates against parties who have been guilty of delay and in favour of persons in possession* S 28 of the Limitation Act has no application to

LIMITATION ACT, 1877—continued

persons who are in possession, and who have had no occasion to sue for recovery of possession ORR v SUNDRA PANDIA I L R., 17 Mad., 255

4 ———— *Regulation VI of 1831 (Madras), s 3—Village services inam—Village*
[I L R., 17 Mad., 255]

for many years up to a date not long prior to the suit Held that, as the plaintiff could have su d only under Regulation VI of 1831 in a Revenue Court, he could not, under Limitation Act, 1877, s 28, acquire a title by prescription to the land PICHU VATTAN v VILAKKUDAYAM ASARI

[I L R., 21 Mad., 134]

5 ———— and Bom. Reg V of
[I L R., 21 Mad., 134]

there is a sufficient bar to the claimant's right to recover, if he ever had any The cause of action

BIN GINAPA v BHAGYANTA BIN DEVIJI
[9 Bom., 260]

6. ———— *Trees—Land—Trees growing upon land are "land" within the meaning of s 29, Act IX of 1871 Possession of land by a wrong doer for twelve years not only extinguishes the title of the rightful owner of such land, but confers a good title on the wrong doer* JAGHANI BIBI v GANESHI I L R., 3 All., 435

7 ———— *Possession of land forming endowment—When the land in suit was alleged to have formed an endowment, it was held that the*

8 ———— *Possessory title—Mortgage*

9 ———— *Suit for hereditary office and for account—Where the plaintiff's right of succession to an hereditary office accrued in 1847, when A took it under a will and it was held his possession was adverse to the plaintiff,—Held that plaintiff was precluded from setting up a fresh right*

LIMITATION ACT, 1877—continued.

And under the present Act the cause of action dates from the obtaining of physical possession in cases where it is practicable to obtain it.

2. — *Actual possession—Possession by the vendee—Right of the purchaser to obtain actual possession where the vendee is in taking possession by some one who has no right to oppose his possession, as a mortgagee who was tenant of the vendor.* *BREHMA v. MANOHAR YAKOUB KHAN.* . . . 3 W. R., 225

3. — *Suit for pre-emption.*—In pleading limitation as a bar to a suit for pre-emption the defendant must show that he was in possession more than a year before the plaintiff was so. *L. HOSSEIN KHAN v. LATIF.*

[W. R., 1864, 117]

4. — *Pre-emption. Suit for—Cancellation of sale.*—Where a church scribe, if he desires to transfer his share, is bound to offer the transfer of it to those who are entitled to transferring it to a stranger, the right of pre-emption, in the case of a conditional sale, and which possession is not transferred, agrees, is not on such sale made, but when the conditional sale becomes absolute. Under art. 10, sch. II of Act XV of 1877, the period of limitation runs from the date physical possession is taken of the whole of the property sold. *JAGJAN RAI v. GANGA DHARI RAI* [I. L. R., 3 All., 176]

JANKI KUMAR v. LAKSHAN KUMAR

[W. R., 1864, 285]

5. — *Suit for pre-emption—Foreclosure by conditional vendee.*—The defendant, a conditional vendee, foreclosed the mortgage, and subsequently sold the auction-purchaser of the rights of the conditional vendee for possession, and obtained a decree, in execution of which he obtained possession. Held that the suit of the plaintiff who claimed pre-emption was not barred by limitation, as it was instituted within one year from the date on which the vendee, whose purchase was sought to be set aside, obtained actual possession of the property to which his title, originally conditional, had become absolute. *RABHAI PANDAY v. NUND KUMAR PANDAY*

[2 Agra, Pt. II, 164]

6. — *Pre-emption—Possession after sale in execution of decree of conditional sale.*—In 1861, B purchased conditionally certain immovable property, which in 1865 was attached in execution of a decree. In 1874, the conditional sale having been foreclosed, B obtained a decree for possession of such property. In February 1875, he obtained mutation of names in respect of such property. In November 1875, arrangements having been made by him to satisfy the decree in execution of which such property had been attached, the attachment was removed. In December 1875, he acknowledged having received possession of such property in execution of his decree. K sued him in November 1876 to enforce his right of pre-emption in respect of such property. Held that limitation ran from the date when B obtained such possession of the status of his conditional vendor as entitled him to mutation of names and to the exercise of the rights of an

LIMITATION ACT, 1877—continued.

owner, and that the suit was barred by limitation. The principle laid down in *Jageshar Singh v. Jawahar Singh*, 1 I. L. R., 1 All., 311, followed. *BIJAI RAM v. KALLU* . . . I. L. R., 1 All., 592.

7. — *Mortgage—Conditional sale—Time from which period begins to run.*—A conditional vendee, who was in possession, applied under Regulation XVII of 1806 to have the conditional sale made absolute. The year of grace expired in July 1875. In November 1871, the conditional vendee sued for possession of the property by virtue of the conditional sale having become absolute. He obtained a decree, in execution of which he obtained, on the 30th April 1879, formal possession of the property according to law. On the 23rd March 1880, a suit was brought against him to enforce a right of pre-emption in respect of the property. Held that the period of limitation for such suit ran, not from the expiration of the year of grace, but from the 30th April 1879, the date the conditional vendee obtained possession in execution of his decree. *PRAG CHAUBEY v. BHAJAN CHATURNI* . . . I. L. R., 4 All., 291

Contra, BUDDREE DOSS v. DOORGA PERSHAD

[2 N. W., 284]

8. — *Purchase by mortgagee—Claim for pre-emption—Cause of action.*—Where a mortgagee becomes a purchaser of the mortgaged property, limitation runs from the date of purchase, as against a claimant by right of pre-emption. *BUDDREE DOSS v. DOORGA PERSHAD* . . . 2 N. W., 284

9. — *Suit for pre-emption—Purchase by mortgagee in possession.*—When a mortgagee in possession purchased the property mortgaged, —Held that his possession as proprietor commenced from the date of purchase, and limitation would run from the date of the purchase against a claimant by right of pre-emption, and not from the date he got his name recorded in the revenue record as proprietor. *MAHOMED BANAZEER v. GUNGA RAM* 3 Agra, 280

10. — *Pre-emption, Suit for.*—Held, in a suit for pre-emption, where the property had been purchased by the mortgagee in possession, that the purchaser obtained physical possession of the property under the sale, not from the date of the sale-deed, but when the contract of sale became completed. Held, therefore, that the contract of sale having become completed on the payment of the purchase-money, the suit, being brought within one year from the date of such payment, was within time. *LACHMI NARAIN LAL v. SHEOAMBAR LAL*

[I. L. R., 2 All., 409]

11. — *Sale by mortgagor of usufructuary mortgage—Possession of vendee—Cause of action.*—When landed property sold by a mortgagor is at the time of sale in the usufructuary possession of the mortgagee, the vendee must be held to have taken possession in the sense of the limitation law at the time when he acquired possession of that which was the subject of sale, viz., the rights of the vendor, and of these he acquired full possession as soon as they had been conveyed to him by a valid transfer. The limitation of one year provided by

LIMITATION ACT, 1877—continued

Whether such a dispossession is within the contemplation of a 15 Act XIV of 1859, or not That

against him If he sues after six months have expired the parties to the suit are left in the same condition as they would have been in under the former law with reference to the production of proof
PROTAS CHUNDER BURCOAH v KANTASWURREE DABEE 2 W R, 250

3 ————— *Proof of title—Possession*
 In a suit brought on the 11th March 1872 to recover certain plots of land as reformation's

plaintiffs took possession thereof as of reformed lands and had been maintained in possession under awards under Act IV of 1840 but that in 1868 they were ousted by the Collector who assessed the same under Regulation XI of 1820 and settled them with

LECTOR OF BACKERGUNGHE L R, 71 A, 73
 ————— art 7 (1871, art 7, 1859, s 1,
 cl 2)

1 ————— *Suit for servant's wages*
 A suit for servant's wages was governed by the limitation prescribed by cl 2 s 1
NOBIN CHUNDER MOZOOMDAR v HENRY [5 W R, S C C Ref, 3

2 ————— *Household servant—Labourer—Temple servant*—A person whose duties are to sweep and clean a temple provide flowers for daily worship and garlands for the idol is not a household servant within the meaning of art 7 of sch II of the Limitation Act
MUTIRANGOT MANAKAL BHAVATHRADAN BHAIJA THIRIPAD v ERANGOT TRIKOVIL PISHARETH RAMA PISHAROTTI [1 L R, 7 Mad, 89

3 ————— *Suit for arrears of monthly payment for instruction*—A suit for arrears of a monthly payment agreed to be made for instruction in fencing and wrestling is not governed by the 7th clause of the Limitation Act as that clause does not apply to the pay of a teacher or instructor
PILWAN JABKAN SARIH VASTHATH v JENAKA RAJA TEVAR [8 Mad, 87

4 ————— *Chowkdar—Servant*—Under Act XIV of 1859 a chowkdar was held to be a servant within the meaning of s 1 cl 2 of that Act
GOLAMER v POSELAN 18 W R, 28

LIMITATION ACT, 1877—continued

The following were held not to be servants —

A manager of a company IN THE MATTER OF THE GANGES STEAM NAVIGATION COMPANY
 [2 Ind Jur, N S, 181

A tahsildar or collector of rent **ARUN CHAUDRA MANDAL v RAMANATH RAKHIT** [1 B L R, S N, 20

S C OROON CHUNDER MONDUL v IOMANATH RUKHIT 10 W R, 260

A mohutir under an amin for batwara purposes **ABHAYA CHARAN DUTT v HARO CHANDRA DAS BUNIK** 4 B L R, Ap, 68

S C OSBOY CHURN DUTT v HURO CHUNDER DOSS BUIEE 13 W R, 150

A mooktear **NITTO GOPAL GHOSE v MACKINTOSH** 8 W R, Civ Ref, 11

5 ————— *Employer and labourer*—The plaintiff agreed with the defendant that in consideration of the possession and use of certain land and a third of the produce for the season he would provide seed and labour and carry on the cultivation's share of the produce Held the parties were not in the position of employer and labourer
ANDI KOWAN v VENKATA SUBBAIYAN 2 Mad, 387

Under the present Limitation Act the servant must be a household servant to come within art 7

as a disbursement on account of the wages of the plaintiff to whom the defendant was legally bound to pay it over
SIVA RAMA PILAI v TURNBULL [4 Mad, 43

7 ————— *Suit for servant's wages—Fixed monthly salary*—Where a servant is appointed on a fixed monthly salary and there is nothing to show that the salary is to be paid in advance the limitation as to each month's salary commences from the time at which the salary became due to the end of the month and not from the date of the dismissal of the servant
KALI CHURN MITER v MAHOMED SOLEEM 6 W R, Civ Ref, 33

————— art 10 (1871, art 10, 1859, s 1,
 cl 1)

1 ————— *Possession—Constructive and actual possession*—Under the Act of 1859, the possession necessary under the corresponding clause was held to be not a mere constructive possession but actual manual possession
GOSHAIR GORIND PERSHAD v FATIMA 2 W R, 5

KUMAR ALI v AZMUT ALI 8 W R, 383

MAHOMED HOSSEIN v MOHSUN ALI [7 W R, 105

JAI KWAR v HEERA LAL 7 N W, 5

LIMITATION ACT, 1877—continued.

partitioned and divided into separate mehals. Subsequently, by two deeds of sale executed on the 13th January 1851, and registered on the 17th January 1851, one of the original co-sharers sold to strangers his shares in all three villages. At the time of the sale, the shares in two of the villages were in possession of the vendors under a proprietary mortgage, the amount due upon which was set off against the purchase-money. The share in the third village was, at the time of the sale, in possession of another of the original co-sharers under a proprietary mortgage. On the 17th January 1855, this last-mentioned co-sharer brought a suit against the vendors and the vendors to enforce his right of pre-emption under the regulations in respect of the shares sold in the three villages. *Held* that in the case of the sale of an equity of redemption by the mortgagor to the mortgagee in possession, which has the effect of extinguishing the right to redeem by a transfer of the two estates in the mortgage, it is not proper to add that any property is sold which is capable of "physical possession" within the meaning of art. 10, sub. II of the Limitation Act. In a statute, such as the law of limitation, which enacts rules, express or implied, to the party to be affected by them, not done by another in respect of which a right accrues to him to impede it, and as to which time is given to run against him, and his remedy from a particular point, the word "physical" implies some corporeal or perceptible act done which of its effect conveys or ought to convey to the mind of a person notice that his right has been prejudiced. An equity of redemption is not susceptible of possession of this description under a sale by which it is transferred, and a pre-emptor impeding such a sale has one year from the date of registration of the instrument of sale within which to bring his suit. *Held*, therefore, that the period of limitation began to run from the date of the registration of the deed of sale, and that the suit was within time. **SHAM SUNDAR v. AMANAT BIKRAM**

(I. L. R., 9 All., 234)

20. — Suit for pre-emption based

as a mortgage by conditional sale—Limitation Act, art. 19—"Physical possession."—*Held* (1) that the other conditions being present necessary to make art. 19 of the second schedule to Act XV of 1877 applicable, art. 10 would apply to a sale which in its inception was a mortgage by conditional sale, but which, either by the operation of Regulation XVII of 1806 or by the operation of Act IV of 1852, had become in effect an absolute sale with the right of redemption gone. (2) That in such a case as above limitation begins to run, where Regulation XVII of 1806 applies, from the expiry of the year of grace. (3) That a share in an undivided zamindari mahal is not susceptible of "physical possession" in the sense of art. 10 of the second schedule to Act XV of 1877. (4) That constructive possession, e.g., by receipt of rent from tenants, is not "physical possession" within the meaning of the said article. *Ali Abbas v. Kalka Prasad, I. L. R., 14 All., 405; Nath Prasad v. Ram Paltan Ram, I. L. R., 4 All., 218; Goordhun v. Heera Singh, S. D. A., N. W. P., 1866, 181; Ganeshee Lall v. Toola Ram, 3 Agra, 376; Jageshar Singh v. Jawahir Singh, I. L. R., 1*

LIMITATION ACT, 1877—continued.

All., 311; and Unkar Das v. Narain, I. L. R., 4 All., 21, referred to. BATUL BEGAN v. MANSEE ALI KHAN I. L. R., 20 All., 315

See RAHAM ILAHI KHAN v. GHASITA

(I. L. R., 20 All., 375)

and ANWAR-UL-HAQ v. JWALA PRASAD

(I. L. R., 20 All., 358)

art. 11.

*See CASES UNDER ART. 13.***I.**

and art. 148—Order rejecting claim under s. 216, Civil Procedure Code, 1859—Ss. 239, 241, 242 of Civil Procedure Code, 1859—Suit for possession.—Where, in consequence of an adverse order passed under the provisions of Act VIII of 1859, s. 216, a suit is (since the Limitation Act, 1877, came into force) instituted to establish the plaintiff's right to certain property, and for possession, such suit is not governed by the provisions of art. 11, sub. II of Act XV of 1877, but by the general limitation of twelve years. *Koylash Chunder Paul Chowdhry v. Premnath Roy Chowdhry, I. L. R., 4 Cal., 610; 3 C. L. R., 25; Malongny Dossee v. Chowdhry Jannunjoy Mallick, 25 W. R., 513; Jeyaraj Lout v. Panirani Dhoba, 8 C. L. R., 54; and Raj Chunder Chatterjee v. Shama Churn Garai, 10 C. L. R., 435 cited. GOPAL CHUNDER MITTER v. MOHESH CHUNDER BORAL*

(I. L. R., 9 Cal., 230; 11 C. L. R., 383)

BISSEKUR BHUGET v. MURLI SAHU

(I. L. R., 9 Cal., 163; 11 C. L. R., 409)

2. — Civil Procedure Code, 1859,

s. 216—Release of property from attachment on application of defendant.—The plaintiff applied for the attachment of a property, and on the objection of the defendant the property was released from attachment. *Held* that the plaintiff was bound, under s. 216, Act VIII of 1859, to sue in the Civil Court to establish his right within a year from the order of release. *JUGOO LAL UPADHYA v. EKBALOOONISSA*

(7 W. R., 456)

3. — Civil Procedure Code, 1859,

s. 216—Date from which period of limitation runs.—The effect of the last sentence of s. 216, Act VIII of 1859, is to exclude a party to an investigation under that section from any other remedy than that expressly provided for him by that section, viz., a regular suit to be brought within one year from the date of the order made against him, and such party cannot wait till the sale of the attached property has taken place and been confirmed, and then bring his suit within one year from the last date. *SETTIAPPAN v. SARAT SINGH* 3 Mad., 220

4. — Civil Procedure Code, 1859,

s. 246—Money-debts.—Act VIII of 1859, s. 246, applies only to immovable property or to specific movable property, not to a debt due. When a debt due to a judgment-debtor is attached in the hands of the person who owes it, he may pay it into Court voluntarily under s. 241, or under compulsion under s. 242 or be sued for it under s. 243. A person thus sued would not be barred because of the lapse of a year

LIMITATION ACT, 1877—continued

[3 Agra, 378 S C, Agra, F B, Ed 1874, 187

12 ————— Suit for pre-emption—

suit should be calculated from the date of the sale and not from the date of the redemption of mortgage
RUSTUM SINGH v. MAHURBAN SINGH

[5 N W, 179

13 ————— Pre-emption—Actual possession—Purchase of equity of redemption—Held (STUART C J dissenting) that the purchaser of the equity of redemption of immoveable property which

does not take actual possession of the property until he takes visible and tangible possession thereof or enjoys the rents and profits of the same after redemption of mortgage JAGESHAR SINGH v. JAWAHIR SINGH

I L R, 1 All, 311

14. ————— Suit for pre-emption—

essential to give validity to the transfer OMBAD KHAN v. IMDAD ALLEE KHAN MAHOMED MA SHOOK ALLEE KHAN v. IMDAD ALLEE KHAN

[1 N W, 9 Ed 1873, 8

15 ————— Suit for pre-emption—Possession—On the 19th December 1876 A gave T a mortgage of his share in a certain village. The terms of the mortgage were that A should remain in possession of his share and pay the interest on the

that he had been in possession since the execution and registration of the deed of mortgage Held that whether T had been in plenary possession of the

LIMITATION ACT, 1877—continued

not entitled to reckon the year from the date on which the possession by the mortgagee of the share was recognized by the revenue department and the suit was therefore barred by art 10 sch II of Act XV of 1877 GULAB SINGH v. AMAR SINGH

[I L R, 2 All, 237

16 ————— Suit to enforce pre-empt

registration of the instrument of sale UNKAR DAS v. NARAIN

I L R, 4 All, 24

17 ————— and art 120—Mahomedan law—Pre-emption—Conditional sale—

tioned putti in execution of a decree which they had

that time DIGAMBER MISSEER v. RAM LAL ROY

[I L R, 14 Calc, 761

18 ————— Joint sale of undivided mehal and other property—In a suit to enforce a

19 ————— Wajib ul urz—Co-sharers—Effect of perfect partition—Physical possession—

LIMITATION ACT, 1877—continued.

But when the Civil Court disallows an investigation under s. 247 of the Code, the claimant may bring his suit within the ordinary period of limitation applicable to his suit. *VENKAPA v. CHENNASAYA* [I. L. R., 4 Bom., 21

See *JETIL v. HO-SAIN*

[I. L. R., 4 Bom., 23 note

16. ———— *Suit by purchaser at sale after rejection of claim in execution proceedings.*—In execution of a decree upon a mortgage executed by A, the decreeholders purchased the tenure which was the subject of the mortgage. On an application for an order to be put into possession they were opposed by B, A's son, who alleged that his father had relinquished the tenure, and that C, who had subsequently become the purchaser under a sale of arrears of Government revenue, had avoided the tenure with A's consent. The Court to which the application was made thereupon refused to enter into evidence or make any enquiry, leaving the decreeholders to establish their right by a regular suit. The order was made under Act VIII of 1859. A suit having been brought,—*Held* that the one year's limitation provided by art. 11 of Act XV of 1877 did not apply. *RASHI BHARAT BEXACK v. BHOJEN CHUNDER SINGH* . 12 C. L. R., 550

17. ———— *Refusal to stay sale in execution of decree.*—Certain lands having been attached in execution of a decree obtained by A against B, C intervened under s. 246, Act VIII of 1859, claiming their release on the ground that before the attachment they had been conveyed to him by B under a deed of sale; and he prayed that the execution sale might be stayed to enable him to put in the deed after having it registered. The Court, however, refused to stay the sale, and the lands were sold in execution. More than a year from the date of the Court's refusal to stay the sale, C sued to establish his right to the lands. *Held* that the suit was not barred by limitation under s. 246, Act VIII of 1859, since the refusal of the Court to postpone the sale was not an order under that section, but was a mere refusal to order a postponement under s. 247. *MUKHUN LALL PANDAY v. KOONDUN LALL*

[15 B. L. R., 228; 24 W. R., 75;
L. R., 2 I. A., 210

18. ———— *Civil Procedure Code, 1859, s. 246—Claim rejected otherwise than on the merits.*—S. 246, Act VIII of 1859, made no distinction in favour of cases not decided on the merits, but made it imperative on the party whose claim to attached property had been rejected, under any circumstances, to sue within one year. *KNODA BUKSH v. PURMANUND DUTT* . 5 W. R., 214

19. ———— *Rejection of claim on untrustworthy evidence.*—A claim under Act VIII of 1859, s. 246, rejected because the evidence produced was unworthy of credit, was on the same footing as if the claimant had failed to produce any evidence, and the order rejecting it was one on the merits and not on default. A suit therefore for the property must be brought within one

LIMITATION ACT, 1877—continued.

year after the rejection of the claim. *GOOROO DOSS ROY v. SONA MONEE DOSSIA*

[20 W. R., 345

SHEEMUNTO HAJRAH v. TAJOODDEEN

[21 W. R., 409

KAMINEE DABIA v. ISSUR CHUNDER ROY CHOW DHRY 22 W. R., 39

THIPOORA SOONDUREE DEBIA v. IJJUTOONNISSA KHATOON 24 W. R., 411

20. ———— *Order rejecting claim to attached property—Dismissal of claim on failure to produce evidence.*—Certain property having been attached in execution of a decree, the plaintiff intervened claiming the property and was directed to adduce evidence, which, however, he failed to do, and the case was struck off. *Held* that the order striking off the case must be taken as an order disallowing the claim, and that the plaintiff was bound to bring his suit to establish his claim within one year from the date of the order. *SADUT ALI v. RAM DHONE MISSEER* 12 C. L. R., 43

21. ———— When a Court disallows a claim to attached property by reason of the claimant not having given any evidence in support of the claim, there cannot be said to have been any investigation under s. 378 of the Civil Procedure Code, and the order cannot be said to be one under s. 281: art. 11 of the Limitation Act does not therefore apply to such a case. *Gooroo Doss Roy v. Sona Monee Dassia*, 20 W. R., 345; *Sreemunto Hajra v. Tajooddeen*, 21 W. R., 409; *Tripoora Soonduree Debia v. Ijjutoonnissa Khatoon*, 24 W. R., 411; and *Sadut Ali v. Ram Dhone Misser*, 12 C. L. R., 43, dissented from. *Kallu Mal v. Brown*, I. L. R., 3 All., 504; and *Chundra Bhusan v. Ramkanth*, I. L. R., 12 Calc., 108, followed. *Sardhari Lal v. Ambika Prasad*, I. L. R., 15 Calc., 521; I. L. R., 15 I. A., 123, explained. *KALLAR SINGH v. TORIL MAHTON* 1 C. W. N., 24

22. ———— *Party refused admittance to proceedings.*—The law of limitation, under s. 246, Act VIII of 1859, could not apply to a person whom the Court had refused to make a party to the proceedings under that section because he came in too late to be made such a party. *ROGHONATH DOSS MOHAPATTUR v. BYDONATH DOSS MAHARATHA*

[14 W. R., 364

23. ———— *Judgment-debtor not a party to proceedings.*—When the judgment-debtor was not made a party to a proceeding under s. 246 of Act VIII of 1859, he was not bound by the law of limitation to sue to establish his right to the property within one year from an order under that section releasing it from attachment. *IMBICHI KOXA v. KAKKUNNAT UPAKKI* . I. L. R., 1 Mad., 381

24. ———— *Civil Procedure Code, 1859, s. 246—Party against whom order is "given."*—*Right of suit—Limitation.*—The plaintiff brought a suit to establish his right to certain property as against the claim which the defendant had successfully made under s. 246 of the Civil Procedure Code

LIMITATION ACT, 1877—continued.

from setting up any ground of defence which he may have against the claim. **RAMCHUTTY KOORER v KAMMESUR PERSHAD** 22 W. R., 36

5. ——— *Goods illegally seized in execution of decree—Suit by owner.*—A person suing for goods which have been illegally sold in execution of a decree. **RAMCHUTTY KOORER v KAMMESUR PERSHAD** 22 W. R., 36

nor had he proved that he held exclusive possession of the property attached. **TELOK CHAND v. SADA RAM** 7 N. W., 113

7. ——— *Suit to avoid sale in execution of decree of Small Cause Court passed with out jurisdiction.*—A obtained a money-decree upon a bond in a Small Cause Court against B, by which it was declared that certain landed property hypothecated by the bond was to be primarily liable for the debt. The decree was transferred to the Court of the Sudder Ameen of the same district, the property was put up for sale, and it was purchased by C. Prior to sale, B alienated the property to D, who after sale preferred his claim to it under s. 246 of Act VIII of 1859, which was disallowed. More than a year after this D brought this suit against C to recover possession. In special appeal it was held that the decree of the Small Cause Court being on the face of it without jurisdiction, the suit was not barred, and the case was remanded, to be tried on the merits. **LALA GANDAR LAL v. HABIBANNESSA**

[7 B. L. R., 235; 15 W. R., 311]

8. ——— *Act VI of 1859.*—A suit in which the decree of the Small Cause Court had been adopted. **VENKATANARAYAN v. ANKAMMA**

[3 Mad., 139]

9. ——— *Claim to attached property.*—A claim to attached property.

wards for a declaration that the property belonged to

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the judgment debtor. *Held* that the suit was not barred. **JAGGABANDHU BOSE v. SACHYI BISI** [8 B. L. R., Ap., 39; 16 W. R., 22]

10. ——— *Order passed in miscellaneous department.*—Where an order is passed in the miscellaneous department without enquiry in conformity with the provisions of s. 246, Act VIII of 1859, it is not to be regarded as an order within the terms of that section, and a suit to set aside such order would not necessarily be barred if not instituted within a year. **BHOLA DUTT v. AHMED**

[3 Agra, 397]

11. ——— *Claim to attached property.*—A claim to attached property.

CHANDRA BHUSAN GANGOPADHYA v. RAM KANTH BANERJI I L. R., 12 Cal., 108

12. ——— *Limitation—Applicability of s. 246.*—Limitation under s. 246, Act VIII of 1859.

RADHA NATH BANERJEE v. JODOO NATH SINGH 7 W. R., 441

13. ——— *Claim to attached property—Suit for possession.*—A claim to property about to be sold in execution of a decree was made under s. 246 of Act VIII of 1859, but the Court declined to entertain it, and passed an order under s. 247.

14. ——— *Civil Procedure Code, 1859, s. 246—Suit after order releasing property from attachment to establish right to bring property to sale.*—N caused certain property to be attached

released the property from attachment and directed N to bring a regular suit. N sued to establish his right to bring the property to sale, alleging that his cause of action arose on the day the order was passed releasing it from attachment. *Held* that the suit was not barred by limitation by reason of not having been instituted within one year from the date of the order. **KAMRAN v. NUR RAM** 6 N. W., 185

15. ——— *Limitation Act (IX of 1871), art 15.*—A claimant against whom an order has been made under s. 246 of the Civil Procedure Code (Act VIII of 1859) must sue to establish his right within one year from the date of such order.

LIMITATION ACT, 1877—continued.

to matters in dispute between decree-holder and claimant, unless the party against whom an order is passed under s. 246 of Act VIII of 1859 fails to bring a regular suit to establish his right. In the case mentioned in the order of reference as apparently conflicting with the above view there had been no adjudication on the basis of possession by the Court passing an order under s. 246 of Act VIII of 1859, and the defendant in possession was therefore at liberty to assert his proprietary title against the lien set up by plaintiff under the said order, passed without jurisdiction on the miscellaneous side. **BADRI PRASAD v. MUHAMMAD YUSUF**

[I. L. R., 1 All., 382]

Distinguished in **JOY PROKASH SINGH v. ADHOY KUMAR CHUND** 1 C. W. N., 701

31. ———— *Suit to establish right.*—*B* caused a certain dwelling-house to be attached in execution of a decree held by him against *M* as the property of *M*. *J* preferred a claim to the property which was disallowed by an order made under s. 246 of Act VIII of 1859. Two days after the date of such order *M* satisfied *B*'s decree. More than a year after the date of such order *J* sued *B* and *M* to establish her proprietary right to the dwelling-house, alleging that *M* had fraudulently mortgaged it to *B*. *Held*, following the Full Bench ruling in *Badri Prasad v. Muhammad Yusuf*, I. L. R., 1 All., 352, that *J*, having failed to prove her right within the time allowed by law, was precluded from asserting it by the order made under s. 246 of Act VIII of 1859, and that, whether or not the decree was satisfied after the order was made, the effect of the order was the same. **JEONI v. BHAGWAN SAHAI**

[I. L. R., 1 All., 541]

32. ———— *Suit for declaration of right and confirmation of possession.*—The limitation of one year in s. 246, Act VIII of 1859, did not apply to a suit for declaration of right and confirmation of possession. **WUZEER JAMADAR v. NOOR ALI**

[12 W. R., 33]

33. ———— *Possession—Claim.*—In execution of a decree against *A*, certain property was sold in 1868. During the proceedings which led to that decree, *B*, the wife of *A*, had preferred a claim to the property under s. 246, on the ground that it was her striddan, and that she had always been in possession of it. Her claim was rejected in 1866, but she remained in possession. *Held* a suit by *B* to establish her title to the land was not barred by the limitation provided by s. 246, though brought more than a year after her claim was refused, since she was at the time in possession and had remained afterwards in possession of the property. **LAKSHI PRYA DEBI v. KHYRULLA KAZI**

[7 B. L. R., 238 note]

S. C. LUCKHEE PEEA DEBIA v. KHYROOLLAH KAZEE 14 W. R., 367

34. ———— *Claimant in possession where claim is rejected.*—If a person making a claim under Act VIII of 1859, s. 246, is in actual possession, his claim is only a declaration that his possession is without title. A suit to establish his right, i.e.,

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for confirmation of his possession, must be brought within one year. **BROJO KISHORE NAG v. RAM DYAL BHUDRA** 21 W. R., 133

35. ———— *Suit for declaration that property ostensibly held by one defendant belonged to another.*—A suit for a declaration that certain property which has been ostensibly held by one of the defendants was in fact the property of another of the defendants who was the judgment-debtor of the plaintiff, is governed by s. 246, Act VIII of 1859, and barred by the limitation of one year. **ABDOOLAH v. SHOKOOR ALI** 14 W. R., 192

36. ———— *Order rejecting claim to attach property.*—Certain property having been attached in execution of a decree, the plaintiff preferred a claim to it as being his exclusive property; but the Court in which the claim was made was of opinion that the plaintiff and the judgment-debtor were in joint possession, and it made an order directing that on the plaintiff's claim being notified the sale should proceed. More than a year afterwards the plaintiff filed a suit to establish his title and alleged exclusive possession. *Held*, distinguishing the cases of *Brijo Kishore Nag v. Ram Dyal Bhudra*, 21 W. R., 133; *Kaminee Debia v. Issur Chunder Roy Chowdhury*, 22 W. R., 39; and *Jodoonath Chowdhury v. Radhamonee Dossee*, 7 W. R., 256, that the order not having been adverse to the plaintiff, the suit was not barred by reason of its not having been brought within a year from the date of the order. **RASH BEHARI DASS v. GOPI NATH BARAPANDA MOHAPATU**

[11 C. L. R., 352]

37. ———— *Failure to establish claim—Suit for establishing title.*—A party failing to establish his claim to attached property under s. 246; Act VIII of 1859, on the point of possession, is not debarred from afterwards bringing a suit to establish title within the period allowed by law for bringing such suit. **BISHENPERKASH NARAIN SINGH v. BABOOA MISSEER** 8 W. R., 73

38. ———— *Right of one decree-holder against another—Suit for declaration of prior lien.*—Two several judgment-creditors attached certain property, which was released upon the claim of a third party, under s. 246 of Act VIII of 1859. One of them sued the successful claimant, and obtained a decree declaring the property in dispute to belong to the judgment-debtor, and thereupon caused the property to be sold, and became the purchaser thereof. Thereupon an assignee of the other judgment-creditor sued him, alleging an earlier lien, and praying a sale in satisfaction thereof. The defence set up was that, as the plaintiff did not come into Court to set aside the order under s. 246 with a year from the date thereof, he was barred from bringing the present suit. *Held* that the omission to bring a separate suit for that purpose did not bar him from obtaining a declaration of his prior lien. **CHINTAMANI SEN v. ISWAR CHANDRA** 3 B. L. R., Ap., 122

S. S. CHINTAMONEE SEIN v. ISSUR CHUNDER CHUNDER 12 W. R., 221

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in execution of a decree obtained against the plaintiff. The order of the Court directed the release of the property from attachment. The present suit was brought more than one year from the date of the order. *Held per SCOTLAND, C.J., HITTLETON and*

25. *Civil Procedure Code, 1859, s. 246*—Certain lands were attached under a *fis*, but on 246, Act *m Held* intiffs and defendant such as to make it necessary for the former to sue for declaration of title within one year. *NITA KOLITA : BISHNURAM KOLITA*

[2 B L. R., Ap, 40]

wherein the plaintiff's claim was disallowed, but the defendants' claim was allowed. The plaintiff after the lapse of a year from the date of the order disallowing his claim, sued to recover possession of the said property. The defence was that the suit was barred by lapse of time under s. 246, Act VIII of 1859. *Held s. 246 did not apply to such a suit.* *DURGARAM ROY v. NARISING DEB*

[2 B L. R., A. C., 254]

S. C. DOORGARAM ROY v. NUBO SINGH DEB

[11 W. R., 134]

27. *Suit to establish right—Attachment*

to the attachment and his objection was allowed in April 1878. In March 1879 *H* sued *M* for a declaration that a moiety of such property belonged to *N*, and to have the order removing the attachment cancelled. *Held* that *N*'s right to a moiety of such property was not extinguished because he had not sued to establish it within one year of the making of the order of May 1871 in the execution-proceedings of *H*, and *H* was competent to sue to establish such right. *MANNU LAL v. HARSUKH DAS*

[I. L. R., 3 All., 293]

28. *Claim by intervenors—Share of attached property.*—When intervenors

LIMITATION ACT, 1877—continued.

claim a share of attached property, the Court should define the respective shares of the debtor and the intervenors, and sell the debtor's definite share only. If the Court omits to do so, and sells the undefined rights and interests, there is no decision under s. 246, Act VIII of 1859, of which the purchaser, by lying in wait without possession for one year, can take advantage. *MONOHAR KRAN : TROYLUCKHO NATH GHOSH* 4 W. R., 35

29. *Civil Procedure Code (Act XIV of 1859), ss. 290, 293—Mortgage, Suit by, against mortgagor and third party who has intervened and obtained an order under a 293, Civil Procedure Code—Execution of decree—Art. 11, sch. II of the Limitation Act (XV of 1877), refers only to suits contemplated by s. 283 of the Civil Procedure Code. Where therefore, a mort-*

releasing the property from attachment, and where the mortgagee, more than a year after the date of that order, instituted a suit against such third party and his mortgagor, to have his lien over the mortgaged property declared and to bring it to sale in execution of his decree, alleging that the title set up by such third party was a fraudulent one, collusively

was barred, but so far as the other relief claimed in the present suit went, that article did not apply, and the suit was not barred. *BOKSHI RAM PRAGASH LAL v. SNEO PRAGASH TEWARI*

[I. L. R., 12 Calc., 453]

30. *Suit to establish right as auction-purchaser to immovable property sold in execution of decree—Adjudication of proprietary right—Res judicata.*—*Pro...*

1859, unless overruled in a regular suit brought within the statutory period, is binding on all persons who are parties to it, and is conclusive. *PEARSON, J., per contra*—S. 246 of Act VIII of 1859 provides for an adjudication of proprietary right on the basis of possession, but the matter is not "*res judicata*" as.

LIMITATION ACT, 1877—continued.

46. — Civil Procedure Code (Act XIV of 1882), ss. 280-283—*Judgment-debtor, Suit by, to establish title to property, the subject-matter of claim in execution-proceedings.*—A judgment-debtor is not necessarily a party against whom an order is made within the meaning of that term as used in s. 283 of the Code of Civil Procedure so as to preclude his instituting a suit after the lapse of one year from the date of such order, the period of limitation prescribed by art. 11, sch. II, Act XV of 1877, to establish his title to, and to recover possession of, the property which has been the subject-matter of a claim in execution-proceedings, and in respect of which an order has been made under s. 280 of the Code. *G* in execution of a decree attached certain immoveable property belonging to the plaintiff, whereupon *B* preferred a claim, and on the 10th March 1881 got the attachment removed. On the 20th July 1881, *B* sold the property to *K*. In 1882 *G* instituted a suit against *B* to set aside the order of the 10th March 1881, and to have it declared that the property was liable to attachment as belonging to the plaintiff. *K* was not made a party to that suit, and it was eventually compromised between *G* and *B*, the plaintiff's title being admitted. *G* thereupon again attached the property, and was met by a claim preferred by *K*, which was allowed on the 15th August 1883. *G* then brought another suit against *K* to obtain relief similar to that claimed in his suit against *B*, but his suit was dismissed on the 17th February 1885. On the 25th September 1885, the plaintiff instituted a suit against *G*, *B*, and *K* to obtain a declaration of his title to, and to recover possession of the property. It was contended that the suit was barred by limitation, being governed by art. 11, sch. II of Act XV of 1877, inasmuch as it was brought more than one year after the date of the order of the 15th August 1883. *Held* that the suit was not such a suit as was contemplated by s. 283 of the Code of Civil Procedure, not being one to establish any right which was the subject-matter of the litigation in the execution-proceedings, and that consequently the provision of art. 11 did not apply to it, and it was not barred by limitation. *KEDAR NATH CHATTERJI v. RAKHAL DAS CHATTERJI*. I. L. R., 15 Cal., 674

47. — Claim to attached property—Order passed against claimant—Neglect of claimant to sue within a year after date of order—Civil Procedure Code (Act XIV of 1882), ss. 278, 279, 280, and 283.—*V* mortgaged certain land to the defendant's father for a sum of R64 advanced by the latter at the date of the mortgage. The mortgage-deed stated that *V* owed the mortgagee another debt of R100, which was due on a separate bond, and it contained a clause in the following terms:—"The principal sum of huns (coins) due on that document, as also this document, I will pay at the same time and take back the land along with this document as well as that document. Till then you are to continue to enjoy the land * * *." The plaintiff,

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having obtained a decree against the mortgagor, attached the land in execution. The defendant (son of the original mortgagee) thereupon claimed that he held a mortgage upon it to the extent of R164. On the 9th March 1881, the Court executing the plaintiff's decree made an order allowing the defendant's claim only to the extent of R64, and directing that the land should be sold, subject to the defendant's lien for that sum. The plaintiffs bought the land at the execution-sale, and offered the defendant R64 in redemption of his mortgage, which the defendant refused. The plaintiffs then brought the present suit to recover possession. *Held* that the charge on the land did not include the old debt of R100. There were no words in the mortgage-deed expressly making that debt a charge on the property. The provisions in the deed only made the equity of redemption conditional on the payment of both the debts. *Quære*—Whether, under the circumstances of the case, the purchaser at the execution-sale would be bound by such a condition. *Held* also that the object of the defendant's application in March 1881 was virtually that the Court should allow his mortgage to the extent of R164, and the Court having allowed his claim only to the amount of R64 by its order, *pro tanto*, rejected his application. It was therefore an order passed against him, and having neglected to establish his right by suit within a year from the date of that order, he was now estopped from insisting on the condition. *YASH-VANT SHENVI v. VITHOBA SHETI*

[I. L. R., 12 Bom., 231]

48. — Civil Procedure Code (1882), ss. 278 and 281—*Disallowance of claim to property under attachment—Suit for property attached.*—In 1879, the plaintiff purchased at a Court-sale the first defendant's interest in certain land, but did not obtain possession. In 1888, the same property was purchased by the fourth defendant in execution of another decree against the same judgment-debtor. It appeared that the plaintiff raised an objection by petition in the course of the proceedings in execution of the last-mentioned decree, but his petition was dismissed on his vakil stating that he was not in possession. The plaintiff now sued in 1891 for the property purchased by him. *Held* that no order had been passed under the Civil Procedure Code, s. 281, and that the suit was not barred under Limitation Act, sch. II, art. 11. *MUNISAMI REDDI v. ARUNACHALA REDDI*

[I. L. R., 18 Mad., 285]

49. — Attachment of property of judgment-debtor—Application by third party to have attachment removed—Order refusing to remove attachment—Suit by claimant to establish his title to attached property.—*A* obtained a decree against *B* and in execution attached certain property. The plaintiff objected, and applied to have the attachment removed. His application was rejected on the 14th January 1881, but on the 23rd March 1881 the judgment-debtor paid the amount of the decree into Court, and the attachment was thereupon removed. *A* subsequently again attached the same property in

LIMITATION ACT, 1877—continued.

39 ————— Possession—Civil Procedure Code, 1859 s. 246

father of the first defendant, and that the plaintiff was

sent case the claimants in possession were not so according to any of the modes of derivation which s. 246 enumerates as authorizing the continuance of the possession and the dismissal of the claim. The possession was in the claimants and there was nothing in the rights of the judgment debtor which could make such possession his possession. This being so even assuming that he was a party to the order made, such order could not be said to be against him because his claim was one which could not have been determined by any order made under s. 246. The

LIMITATION ACT, 1877—continued

which refers to the section in Act X of 1877, corresponding to s. 246 of Act VIII of 1859. **LUCHMI NARAIN SINGH v. ASSRUP KOER** I L R, 9 Calc, 43

42 ————— Suit after order rejecting claim to property attached in execution of decree.—In

decrees were obtained on a bond executed by U by which an eight annas share of mouzah A was hypothecated as collateral security, and in execution of those decrees the defendants brought to sale and themselves purchased not an eight annas share only but the whole of mouzah A and were all wed by the Court to set off the purchase money against the amounts due to them under their decrees. At the same time the plaintiff's execution case was struck off on 30th June 1880. In a suit brought by the plaintiff under s. 295 of the

BHARATI v. MATHURA LALL BHAGAT

(I L R, 12 Calc, 493)

43 ————— Suit for possession after rejection of claim.—In a suit for possession after rejection of a claim under s. 246 Act VIII of 1859

aside an order within the meaning of art 11 of sch II of the Limitation Act (XV of 1877) **HARI SHANKAR JEBHAI v. NARAYAN KARSAN**

(I L R, 18 Bom, 280)

45 ————— Code of Civil Procedure ss 274, 290, 293.—Investigation of claim attached property.—A decree holder against whom the release of property attached in execution of his decree has been ordered after investigation under s. 290 of the Code of Civil Procedure is limited by art 11 of sch II of Act XV of 1877 (the Indian Limitation Act) to one year within which to institute a suit to establish that the property is that of his judgment-debtor. **SARDHARI LAL v. AMBIKA PRESHAD**

(I L R, 15 Calc, 521 I, R, 15 I. A, 123)

KUTTIYALI v. VAYALA PARAMBATH IMBICHI AMMAH
(6 Mad, 416)

40 ————— Civil Procedure Code, 1859 s. 246.—Certain property having been mort

gaged the property to the plaintiff who not being able to get possession brought a suit against the defendants in whose hands some or all of the property seemed to be and who sent up that they had purchased it from B G and B D. Held that the suit was not barred because it had not been instituted within twelve months of the date when the objections of B and G were allowed. **KAMESWAR PRESHAD v. KADIR KHAN** 20 W R, 393

41 ————— Suit to recover property sold in execution.—Civil Procedure Code (Act VIII of 1859) s. 246 and Act V of 1877, ss 290

LIMITATION ACT, 1877—continued.

behalf of a minor by the manager without the sanction of the Court of Wards—Court of Wards Act (Beng. Act IX of 1879), s. 55.—An order which was passed during his minority is not binding upon a person whose estate is under the management of the Court of Wards, if the proceeding in which it was passed was not instituted by the manager with the sanction of the Court of Wards, i.e., of the Commissioner to whom the Court of Wards delegated its authority to grant such sanction. In a suit brought by the plaintiff, as shebait of an idol, for recovery of possession of certain immoveable properties, or in the alternative in his own right as an heir to the last full owner, on a declaration that certain execution-proceedings which were taken against a person who was not the legally adopted son of the last full owner, and therefore the sales held therein were not binding upon him, the defence (*inter alia*) was that the suit was barred by limitation under art. 11, sch. II of the Limitation Act. *Held* that, inasmuch as the order under s. 281 of the Civil Procedure Code was passed during the plaintiff's minority, and as the proceeding in which the said order was passed was not instituted by the manager with the sanction of the Court of Wards, the suit was not barred under art. 11, sch. II of the Limitation Act, although it was brought more than one year after the claim was rejected. *RAM CHANDRA MUKERJEE v. RANJIT SINGH*

[I. L. R., 27 Cal., 242
4 C. W. N., 405]

62. — Civil Procedure Code (Act XIV of 1859), ss. 278, 281, and 283—*Claim preferred by a defendant's predecessor in title—Claim disallowed, but no suit brought within one year to set aside the order—Effect of such an adverse order as against the defendant in a suit, and how far binding.*—In a suit brought by the plaintiff to recover possession of certain lands by virtue of a purchase by his father, at an execution-sale held by a Civil Court, it was found by the Court below that the vendor of the defendant had purchased the said lands at a sale held by a Deputy Collector for arrears of road-cess, and had preferred a claim to the disputed property in the execution-proceedings which led to the sale at which the plaintiff's father purchased but which was disallowed, and no suit was brought by him (the defendant's vendor) within one year to set aside the order disallowing the claim. *Held* that the vendor of the defendant not having brought a suit within one year to set aside the order disallowing the claim, the defendant was concluded by that order, even if she was not the plaintiff in the suit, to establish her right to the property in dispute. *Nemagauda v. Paresha, I. L. R., 22 Bom., 640, referred to. SUBNAMOXI DAS v. ASHUTOSH GOSWAMI* . . . I. L. R., 27 Cal., 714

63. — Civil Procedure Code (1859), s. 280—*Claim by a mokurari.*—Upon attachment of immoveable property in execution of decree, a claim was made on the ground that the judgment-debtor had granted a mokurari in respect of the property in favour of the claimant. The claim was allowed, and the property was ordered to be sold with a declaration of the mokurari. More than a

LIMITATION ACT, 1877—continued.

year after this order, the decree-holder who purchased at an execution-sale brought a suit for a declaration that the mokurari was fraudulent and benami and for possession and mesne profits. *Held* that the order was a judicial determination under s. 280 of the Civil Procedure Code (1859), and that therefore the suit was barred under art. 11 of the second schedule of the Limitation Act (XV of 1877). *RAJARAM PANDEY v. RAGHUBANSMAN TEWARY I. L. R., 24 Cal., 569*

64. — — and art. 13—Civil Procedure Code, 1859; s. 332.—Where an application was made under s. 332 of the Code of Civil Procedure for possession of property and rejected, and the applicant brought a suit to recover the property more than one year subsequent to the order rejecting the application,—*Held* that the suit was not barred either by art. 11 or art. 13 of sch. II of the Limitation Act, 1877. *AYYASAMI v. SAMIYA I. L. R., 8 Mad., 82*

65. — Civil Procedure Code, 1859. s. 269, Order rejecting application under—*Suit brought after one year—Civil Procedure Code, 1877, s. 335.*—An order having been passed on the 10th August 1877 under s. 269 of the Code of Civil Procedure, 1859, cancelling delivery of possession of land brought to sale and purchased by a decree-holder, no suit was brought by the decree-holder to establish his rights to the land until 1883,—*Held* that the repeal of s. 269 of the said Code on 1st October 1877 did not deprive the order of the 10th August 1877 of the effect it possessed when passed, and therefore that the suit was barred by limitation under s. 269, and arts. 11 and 13 of Act XV of 1877 were not applicable. *Koylash Chunder Paul Chowdhry v. Preonath Roy Chowdhry, I. L. R., 4 Cal., 610, and Gopal Chunder Mitter v. Mohesh Chunder Boral, I. L. R., 9 Cal., 230, distinguished. VENKATACHALA v. APPATHORAI* . . . I. L. R., 8 Mad., 134

66. — Civil Procedure Code, 1859, s. 269—*Party not in possession.*—S. 269. Act VIII of 1859, does not contemplate that the party in actual possession must sue regularly to get possession within one year, but that the person who is not in actual possession shall do so. *FRIDAYE SUTK-DAR v. OZEEOODDEEN* . . . 7 W. R., 87

67. — Civil Procedure Code, 1859, s. 269—*Claim by mortgage.*—An attachment having been made in execution of a decree for rent, an intervenor claimed the land as mortgaged to himself, but his application was rejected, and he was directed by the Collector to bring his objection, if he had any, under s. 269, Act VIII of 1859. *Held* that he was not bound to do so, and his omission did not bar his right to bring a suit to establish the validity of the mortgages under which he claimed, provided it was brought within the period permitted by Act XIV of 1859. *DEEN DIAL-BURMO DASS v. PORAN DASS* [9 W. R., 474]

68. — Civil Procedure Code, 1859, s. 269—*Obstruction in taking possession after sale in execution of decree—Order.*—A purchaser of immoveable property at a Court sale, having been obstructed by the defendant, made an application to the Court, under s. 269 of Act VIII of 1859, for

LIMITATION ACT, 1877—continued

title to the property *substantia* *the defendant con-*
tended that the suit was barred not having been
filed within one year from the date (14th January
1881) of the order made against the plaintiff refusing
his application to raise the first attachment. *Held*
that the suit was not barred by limitation. No
doubt an order had been made against the plaintiff
in 14th January 1881 but as the attachment

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on his mortgage and proceeded to execute it by attach-

50 ———— *Civil Procedure Code,*
1859, s 246—*Limitation Acts (IX of 1871), sch*
II, art 15, (XV of 1877) sch II, art
13—Suit after rejection of claim to attached
property—A petition under s 246 of the Code of

in July 1871, WILLIAM TWELVE YEARS 10th Jan 1881

was not barred by limitation *James v. James*
APPALACHAREU I L R., 12 Mad., 284

51. ———— *Civil Procedure Code*
(Act XIV of 1882), s 231—Order disallowing
claim to attached property—The effect of an order

52 ———— *Civil Procedure Code*
(1882) s 283—Order on claim to property found
not to be attached—Land having been granted to
several persons jointly disputes arose among
them with reference to its allotment. The disputes
having been settled by arbitration, one of the
grantees sold his share to the plaintiff. Before the
arbitration another of the grantees mortgaged seven
acres of the land to A, who did not become a party
to the arbitration. A subsequently obtained a decree

53 ———— *Civil Procedure Code,*
s 283—Order removing attachment—Party to

by C a decree was passed by consent of A and C
reversing the decree appealed against. B now sued
C and another, more than a year from the date
of the order removing the attachment to obtain

SUBBARAYUDU I L R., 13 Mad., 368

54. ———— *Civil Procedure Code,*
1882 s 252—*Order in attachment proceeding Effect*

in order
plaintiff
filed At
Court a
defendants
were not barred by limitation from denying the
genuineness and validity of the lease and mortgage
they having failed to do so in certain execution-
proceedings which had taken place in 1890. It

had been subrogated either to the cause of the
decree-holder or to that of the plaintiff who intervened,
and therefore they were parties against whom

parties against whom the order in the execution

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in which upon the widow's death he was sued as representing the estate of the widow, the property in question was sold notwithstanding objection taken by the present plaintiff that the property was that of K. The plaintiff's suit was filed more than a year after the execution-sale, and it was objected that it was therefore barred. *Held* that it was not necessary that the suit should have been filed within one year from the date of the execution-sale, because (1) the setting aside the execution-sale was only collateral to the main object of the suit; and (2) the present plaintiff was not a party in her own character to the suit in execution of the decree in which the property was sold. **KALI MOHUN CHUCKERBUTTY v. ANANDA MONI DABEE** **9 C. L. R., 18**

11. ———— Suit to set aside sale of land in execution of decree.—A suit to set aside a sale of land in execution of a decree against a third party was held not barred by limitation under cl. 3, s. 1, if brought within a year after the sale actually took place. **DOSSEE v. SHEERBANEE DABIA** **[5 W. R., 123]**

See **MAHOMED ATZUL v. KANHYA LALL** **[2 W. R., 263]**

RAM GOPAL ROY v. NUNDO GOPAL ROY **[4 W. R., 42]**

But these cases were overruled by **JODOONATH CHOWDHRY v. RADHOMONEE DOSSEE** **[B. L. R., Sup. Vol., 1643 : 7 W. R., 256]**

12. ———— Suit for possession by setting aside sale.—In a suit not only for reversal of sale but also for possession and declaration of title, the limitation of one year does not apply. **ANORAGEE KOORER v. BRUGOBUTTY KOORER. SHAM SUNDER KOORER v. JUMNA KOORER** **25 W. R., 148**

13. ———— Cause of action—Suit for possession after sale in execution.—The plaintiffs sued to recover possession by declaration of right to certain chur lands as accretions to a patni talukh and for damages, alleging that they held possession under a mokurari lease granted by the defendant No. 3, but were ejected by the defendant No. 1, who had purchased at a sale in execution of an *ex-parte* decree for arrears of rent obtained by the defendant No. 2 against defendant No. 4 (who was the heir of No. 3's vendor), the ejectment having been effected under proceedings taken by the Deputy Magistrate under Act XXV of 1861, s. 318. *Held* that the plaintiffs' cause of action accrued from the date of their ejectment. It was not a suit to set aside the sale, but a suit for possession on declaration of title. **BANEE MADHUB BUKSHEE v. RADHA MADHUB MOZOOMDAR** **22 W. R., 196**

14. ———— Suit for possession and declaration of right by setting aside sale.—The plaintiffs sued for possession of, and a declaration of their right to, a share of a zamindari, and to set aside a collusive decree which defendant No. 1 obtained on the 13th September 1867 against the defendants Nos. 2, 3, and 4, and to set aside the sale which was held on the 16th December 1868 in execution of that decree. There was a further prayer that the names

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of the plaintiffs might be substituted for that of the defendant No. 1 on the Collectorate towji. *Held* that the suit, although a portion of the prayer was for possession and declaration of right, was substantially to set aside the sale of 16th December 1868, in virtue of which, unless got rid of, the purchaser-defendant's title must prevail over that of the plaintiffs. Accordingly the suit came within the purview of Act XIV of 1859, s. 1, cl. 3, and, not having been brought within one year from the date of the sale, was barred. **RAM KANTH CHOWDHRY v. KALEF MOHUN MOOKERJEE** **22 W. R., 84**

15. ———— Sale subject to claimant's right.—Where a person's claim to attached property was not rejected, but the sale took place subject to it, *Held* that he could sue to establish his right to the property at any time within twelve years, cl. 3, s. 1, not applying to such a case. **RUTNESSUR KOONDOD v. MAJEDA BIBEE** **7 W. R., 252**

16. ———— Suit to recover immovable property.—Where the plaintiff asked in terms to have a sale in execution of her husband's right and interest in certain land set aside on the ground that those rights had previously to the sale been conveyed to herself, *Held* that the suit was in effect one to recover immovable property and not one to which cl. 3, s. 1, Act XIV of 1859, applied. **RADHA KOONWAR v. JANKEE KOONWAR** **9 W. R., 199**

KINOO DOSS v. RUGHONATH DOSS **[4 W. R., 34]**

17. ———— Suit by claimant to recover property in which judgment-debtors have no interest.—Where a claimant, without attempting to impeach either the proceedings in the suit or in the decree or in the subsequent sale, seeks to recover property belonging to himself in which the judgment-debtors had no right or interest, and upon which, therefore, the sale in execution could have no legal operation, *Held* that a suit of this nature was not a suit to set aside the "sale of property sold under an execution" within the meaning of cl. 3, s. 1; and it was not incumbent on such a claimant to sue, as therein prescribed, within one year from the date of sale. The plaintiff might ask in terms to avoid the sale, but such an allegation cannot alter the real nature of the suit, if it is otherwise sufficiently disclosed. **MAHOMED BUKSH v. MAHOMED HOSSEIN** **[3 Agra, 171]**

S. C. Agra, F. B., Ed. 1874, 145

See **SHARAFATUNNISSA v. LACHMI NARAIN** **[7 N. W., 288]**

18. ———— Suit by prior purchaser for possession—Sale to second purchaser.—The one year's limitation provided in s. 1, cl. 3, did not apply to a suit by a prior purchaser to assert his rights after an auction-sale of the right and interest of the judgment-debtor in the property to another purchaser subject to those rights. **MUNGROO SAHOO v. JEDDAR SINGH** **2 Agra, 231**

Nor where he has become the representative by purchase of the other purchaser. **BITRUZ BHUT v. LALLA RAJKISHORE** **2 Agra, 284**

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the removal of the obstruction, but subsequently withdrew his application. The Court thereupon made an endorsement upon the application to the effect that, as the applicant did not wish to proceed further, no investigation was made. *Held* that no such order had been made as was contemplated by s 269 of Act VIII of 1859, that section contemplating at least an order against one party or the other, and that, therefore, the provisions contained in the same section as to the time within which a suit may be brought, did not apply to the case of the plaintiff. **BRINKHA SAKARLAL**. I. L. R., 5 Bom., 410

— art. 12 (1871, art. 14; 1859, s. 1, cl. 3)

1. — *Suit to set aside fraudulent sale.*—Cl 3, s 1, applied only to suits to set aside sales on account of irregularity and the like, but not to suits to set aside fraudulent deeds under colour of which the sale was made. **KISSEN BULLUS MAHATAB v. ROJHOONUNDUN GHAKOR**

[6 W. R., 305]

2. — *Suit to set aside sale in execution.*—The limitation of one year provided by

3. — *Suit by mortgagee to enforce lien.*—*Held* that the limitation of one year provided by cl 3, s 1, Act XIV of 1859, was not applicable to a mortgagee's suit seeking enforcement of his mortgage lien against the property. **RAI PURDUMUN KISHEN v. ROUSHUN SINGH** I. Agra, 111

4. — *Suit to set aside sale in execution of decree.*—*Civil Procedure Code, 1859, s. 261.*—*Quere.*—Whether the one year's limitation (of suits to set aside sales in execution of decrees) under cl 3, s. 1, applied to a suit brought against a person who had obtained possession of property by delivery under s. 261 Act VIII of 1859. **SUSOORUR v. GOLAM NUZZ**. 2 W. R., 65

5. — *Sale of moveable property in execution of decree.*—*Irregularity in sale.*—*Civil Procedure Code, 1859, s. 252.*—The law (s 252, Act VIII of 1859) provides that no irregularity in the sale of moveable property under an execution shall

PERSHAD. 2 Agra, Pt. II, 175

KISHEN SOODUR v. FUKERHOODESY MAHOMED
[W. R., 1884, 61]

6. — *Suit to set aside sale in execution of decree.*—*Per INNES, J.*—Art 12 of the second schedule of the Limitation Act, 1877, which requires suits to set aside a sale in execution of a decree of a Civil Court to be brought within one year from the date the sale becomes final, does not apply to

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suits in which the plaintiff was not a party to, and not bound by, the sale sought to be set aside. **SADAGOPA EDINTARA MAHA DESIKA SWAMIAY v. JAMUNA BAI AMMAL**. I. L. R., 5 Mad., 54

7. — *Suit to set aside sale.*—*Suit to recover land sold in execution of decree.*—*Held* having bought lands from A, whose husband (deceased) acquired them at a Court sale, sued B in ejectment in 1879. B pleaded limitation on the ground that B (her deceased husband) had pur-

in this suit, and it was not barred by art. 12 of the Limitation Act, 1877. **VENKATA NARASIAH v. SUBBAMMA**. I. L. R., 4 Mad., 178

8. — *Sale of tarwad property in*

execution of decree, and it was no objection in the plaint that the defendant was sued as karnavan or that the debt was binding on the tarwad. — *Held* that a sale of tarwad property in execution of the decree was not

9. — *Suit to set aside sale.*—*Purchase of decree by joint debtor.*—*Held* sold to S, her

S has two right a suit brought by A against S for the purpose of recovering the property. — *Held* that the

10. — *Suit to set aside sale in execution.*—*Party to suit.*—After the death of the widow of K, the plaintiff sued as the heir of K to recover certain immovable property alleged to have been granted to the widow for life by K for her maintenance. It appeared that in execution of a decree obtained against the plaintiff in a previous

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though erroneous and liable to be set aside in the way presented by the procedure law, is not a nullity, but remains in full force until set aside, and a rule held in pursuance of such order is, until set aside, a valid rule: a suit to set aside such a rule is governed by art. 12, cl. (a), of sch. II of Act XV of 1877. The word "disallowed" in s. 312 of the Civil Procedure Code has no reference to an order passed on an appeal, but refers to the disallowance of the objection by the Court before which the proceedings under s. 311 are taken. On the 13th June 1878, a judgment-debtor filed a petition objecting to execution of a decree against him proceeding on the ground that the decree was barred. On the 18th November 1878, that objection was overruled and certain of his property sold. Against the order overruling his objection the judgment-debtor appealed, and ultimately, on the 13th January 1880, the order was set aside by the High Court, and the decree was held to have been barred. Pending these proceedings, the judgment-debtor also, on the 17th December 1878, applied, under the provisions of s. 311 of the Civil Procedure Code (Act XIV of 1872), to set aside the sale on the ground of material irregularity, but that application was ultimately rejected on the 17th May 1879, and the sale was confirmed on the 21st May 1879. On the 2nd April 1880, the judgment-debtor applied to set aside the sale on the ground that the decree, in execution of which it had taken place, had been held to be barred, and though an order setting aside the sale was made by the original Court, it was subsequently set aside by the High Court on the 13th April 1881, as having been made without jurisdiction. The judgment-debtor now brought a suit on the 4th January 1882 upon the same grounds to set aside the sale and recover possession. *Held* that the suit was barred. **MAHOMED HOSSEIN v. PERUMUR MANTO**

(I. L. R., 11 Cal., 237)

See **GUNESAR SINGH v. GONESH DAS**

(I. L. R., 25 Cal., 789)

27. — — — Endowment by Hindu—
Execution-proceedings against manager, Suit to set aside.—In 1866, *V* (the father of the plaintiff) sued his brother *H* and *G* (one of the two sons of *H* and defendant No. 1) to establish his right to a third share of the management of certain lands granted for the maintenance of a Hindu temple. In that suit *V* obtained a decree that he should have the exclusive management every third year, but was ordered to pay costs. To enforce payment of these costs, *H* in execution of the decree attached the third share of *V* in the management of the land. The share was accordingly sold by auction in January 1870 to a Marwadi, who afterwards, in May 1870, resold it to the appellant *T* (another son of *H* and defendant No. 2). *V* died in 1876. In 1879 the plaintiff sued *G* and the appellant (the two sons of *H*) for his share of the management. It was contended for the defence that, as the execution-sale of January 1870 was not set aside within a year, the right to treat it as void by the plaintiff was barred by art. 12 of sch. II of Act XV of 1877. *Quære*—Whether *V* could have got himself reinstated in the management without bringing a suit to set aside the sale within a year from the date of the

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order confirming it. **TRIMBAK BAWA v. NARAYAN BAWA** I. L. R., 7 Bom., 188

28. — — — Rights of purchasers at sales in execution of decree—Two judicial sales of the same property, each in execution of a separate decree—Conflicting claims thereunder—Purchase pendente lite—Limitation Act (XV of 1877), sch. II, art. 13.—The same property having been sold in execution of two different decrees, the result was that the two purchasers at the respective sales afterwards contested title to the property. The sale to the first purchaser was confirmed in November 1882. The sale to the second, who obtained possession, took place in October 1881, the property having been attached under the second decree in March 1883. The first purchaser on the 28th July 1884 brought a suit, to which the second purchaser was not a party, to have that attachment declared invalid. By a decree of the 14th November to that effect the second purchaser was bound as a purchaser *pendente lite*; and his possession was of no avail to him. *Held* that the attachment of March 1884, although it had preceded the institution of the first purchaser's suit of 1884, afforded no support to the second purchaser's claim, attachment under Ch. XIX of the Civil Procedure Code merely preventing alienation, and not giving title. Moreover, after the first sale in 1882 there had been no interest left to be sold to another purchaser, so that, without there having been the decree of 1885, the second purchaser would still have had no title against the first. There was no occasion for the setting aside the second sale within the meaning of arts. 12 and 13 of sch. II of the Limitation Act (XV of 1877); nor was it set aside. That sale was held not to affect the right of the first purchaser, there being a wide difference between setting aside a sale and deciding that a plaintiff's right was not affected by it. **MOTI LAL v. KARRABULDIN**

(I. L. R., 25 Cal., 179
I. R., 24 I. A., 170
1 C. W. N., 638)

29. — — — Minor, when bound by proceedings against him—Minors Act (XX of 1864), s. 2—Suit by a minor, one year after attaining majority, to recover property sold in execution of a decree obtained against him during minority.—In 1870 a creditor of the plaintiff's father brought a suit (No. 573 of 1870) against the plaintiff and obtained a money-decree against him. The plaintiff was then a minor and his estate was administered by the Collector of Ratnagiri. In this suit he was represented by his mother and guardian. At the sale held in 1871, in execution of the decree, the property in question was purchased by the defendant, who obtained possession in 1876. In 1879 the plaintiff attained majority, and in 1882 he brought the present suit to recover the property from the defendant. The lower Courts, regarding the suit as one to set aside the sale to the defendant, held that it was barred by limitation under art. 12 of sch. II of the Limitation Act (XV of 1877). On appeal by the plaintiff to the High Court, *Held* that art. 12 of the Limitation Act (XV of 1877) did not apply, and that the suit was not barred. That article applied only to cases in which

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decree of a Civil Court obtained against S, for arrears of revenue, by the assignee of the revenue of the lands of D and S. *Held*, in a suit brought by D to recover her land from the purchaser at the Court sale, that the suit, not having been brought within one year from the date of the confirmation of the sale, was barred by art. 12 of sch. II of the Limitation Act, 1877. *SURYANNA v. DURGI*

[I. L. R., 7 Mad., 258]

38.

Suit to set aside sale in execution of decree—Suit for land sold in execution as property of third parties.—The plaintiffs sued in 1893 to recover possession of land of which their family had been in possession till 1884. The land had been sold to the defendant in 1881 in execution of a decree against the plaintiffs' cousins, but the sale had not been confirmed. A decree was passed as prayed in respect of a moiety of the land which represented the plaintiffs' share. *Held* that the decree was right. *Quære*—Whether the suit would have been barred under the one year's rule of limitation if the sale had been confirmed. *Suryanna v. Durgi*, I. L. R., 7 Mad., 258, doubted. *Parakk. Ramdor v. Bai Takhat*, I. L. R., 11 Bom., 119, referred to. *NADASIMHA NAIDU v. RAMASAMI*. I. L. R., 18 Mad., 478

39.

Bona fide purchasers.—Art. 12 of that schedule which prescribes a period of one year for suits to set aside sales for arrears of revenue is intended to protect *bona fide* purchasers only. *VENKATAPATHI v. SUBRAMANYA*

[I. L. R., 9 Mad., 457]

40.

Sale for arrears of revenue—Suit for possession of land—Fraud.—The plaintiff's land was sold by the revenue authorities for arrears of assessment due to the inamdar. The plaintiff applied to the mamlatdar to have the sale set aside on the ground of fraud on the part of the inamdar, but his application was rejected; and the sale was confirmed in July 1879. The auction-purchaser was thereupon put in possession. In 1886 the plaintiff sued to recover possession of the land in question. *Held* that the suit, having been brought more than one year after the date of the sale, was barred by art. 12, cls. (b) and (c), of sch. II of the Limitation Act (XV of 1877). The sale was one in pursuance of an order of the Collector or other officer of revenue, and, if not for arrears of Government revenue, was at any rate a sale for arrears of rent recoverable as arrears of revenue. The plaintiff, as occupant of the land, was bound by the sale, unless and until it was reversed, and the title of the purchaser at the sale was a perfectly good title until the sale was set aside in due course of law. *BALAJI KRISHNA v. PIRCHAND BUDHARAM*

[I. L. R., 13 Bom., 221]

41.

Sale under Public Demands Recovery Act (Bengal Act VII of 1880) for arrears of cesses—Confirmation of sale.—Where the Board of Revenue discharged an order of the Commissioner, dated the 25th January 1884, which had confirmed a sale by the Collector in 1882, but afterwards on the 21st August 1886 discharged its

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own order and revived that of the Commissioner.—*Held* that the confirmation of sale dated only from the 21st August 1886, and that a suit brought in July 1887 to set aside the sale was not barred by Act XV of 1877, art. 12. *RAJNATH SAHAI v. RAMCHART SINGH*. I. L. R., 23 Calc., 775

[I. L. R., 23 I. A., 45]

42.

Madras Rent Recovery Act (Madras Act VIII of 1865), ss. 7, 38, 39 and 40—Suit to recover land sold, without setting aside sale.—Where a plaintiff sued to recover land alleged to have been sold under the provisions of the Rent Recovery Act, alleging that the provisions of s. 7 of that Act had not been complied with, and that therefore the sale was illegal.—*Held* that the suit could not proceed without setting aside the sale, and that, the sale having taken place more than a year before the institution of the suit, the suit was barred. *RAGAVENDRA AYYAR v. KARUPPA GOUNDAN*

[I. L. R., 20 Mad., 33]

43.

Dispossession—Suit to recover land sold by mistake in execution of decree.—Limitation Act, sch. II, art. 12 (a), is not applicable to a case in which dispossession is the cause of action, and in which the plaintiff was not a party to, or bound by, the sale. *Held* accordingly that a suit brought in 1892 to recover possession of the plaintiff's share of land sold by mistake in execution of a decree against his uncle in 1881 was not barred by limitation. *KADAR HUSSAIN v. HUSSAIN SAHEB*

[I. L. R., 20 Mad., 118]

44.

Suit to recover property sold in execution of a decree in excess of what was saleable under the decree.—Art. 12, cl. (b), of the second schedule to the Limitation Act, 1877, does not apply to a suit to recover property sold ostensibly in execution of a decree, but the sale of which was in fact not authorized by the decree under which the said property purported to have been sold. *Ram Lal Mohtra v. Bama Sundari Debia*, I. L. R., 12 Calc., 307; *Balwant Rao v. Muhammad Husain*, I. L. R., 15 All., 324; *Lala Mobaruk Lal v. The Secretary of State for India in Council*, I. L. R., 11 Calc., 200; *Dakhina Churn Chattopadhyaya v. Bilash Chunder Roy*, I. L. R., 18 Calc., 526; *Mahomed Hossein v. Purundur Mahto*, I. L. R., 11 Calc., 287; and *Sadagopa v. Jamuna Bhai Ammal*, I. L. R., 5 Mad., 54, referred to. *Suryanna v. Durgi*, I. L. R., 7 Mad., 258, dissented from. *NAZAR ALI v. KEDAR NATH*

[I. L. R., 19 All., 308]

45.

Suit by reversioner to establish his title to property sold in execution of decree obtained against a widow as representing estate—Collusion.—A widow of a deceased Hindu represents the estate of the reversioner for some purposes; but it is her duty not only to represent the estate, but to protect it. When a suit is brought on the ground that the widow did not in a former suit protect the interests of the person who was to take after her death, but collusively suffered judgment against herself and sale of her husband's property in execution, then if such person on that

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presented as required by s 2 of Act XI of 1864
VISHNU KRISHNA v RAMCHANDRA BHASKAR

[I L R, 11 Bom, 130]

30 ——— and art 7—Guardian—Representative of minor in a suit against him—Certificate—Act XX of 1864—Joint family—Mortgage by father and eldest son—Death of father and eldest son—Decree obtained by mortgagee against minor son represented by the widow—Sale in execution—Subsequent suit by minor to set aside sale—I, 1862 J and his son A mortgaged the property in dispute to B. In 1863 B died leaving a widow S and two sons viz A and P a minor. In 1866 A and S the latter of whom acted for herself and as guardian of her minor son P settled the account with B the mortgagee obtained a

this decree D purchased the property in dispute in 1870. In 1881 P filed the present suit to recover possession of the property alleging that D's

been a (second plaintiff) it was cont'd upon behalf of the defendant D that the suit not having been brought within one year after P had attained majority was barred by limitation under art 12 sch II of Act XV of 1877. Held that the suit was not barred by limitation. P had not been properly represented by S in the suit of 1869 as she had not obtained a certificate under the Minors Act (XX of 1864). P was therefore not bound by the decree in that suit or by the sale in execution and art 12 sch II of Act XV of 1877 did not apply. DASI HIMAT v DHIRAJRAM SADARAM [I L R, 12 Bom., 18]

31. ——— Order of Re venue officer—Judicial order—The order of a Collector or other officer of revenue as the word is used in the latter portion of cl 3 of s 1 of Act XIV of 189 means an order of the nature of a decree or made by the Collector or other Revenue officer

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elapsed from the date of sale the suit was not barred under the provisions of cl 3 of s 1 of Act XIV of 1859. SANKHABAM VITHAL ADHIKARI v COLLECTOR OF RATNAGIRI 8 Bom, A C, 288

32. ——— and art 14—Suit to set aside an act or order of an officer of Government—Suit for possession on—Dispossession under an order made by officer of Government—Arts 12 and 14 of sch II of the Limitation Act (XV of 1877) refer to orders and proceedings of a public functionary to which by law is given a

it is legally a nullity and therefore need not be set aside. SHIVAJI YESHI CHAWAN v COLLECTOR OF RATNAGIRI [I L R, 11 Bom, 429]

33. ——— Fraud—Suit to set aside sale in execution of decree—Beng Reg XLV of 1793—In a suit for the cancellation on the ground of fraud of an auction sale made under the provisions of s 12 Regulation XLV of 1793 and for the reversal of a Judge's order in appeal confirming the sale the period of limitation was held (under s 9 Act XIV of 1859) to run at the latest from the date of the Judge's order of confirmation and to extend to one year under cl 3 s 1 ENAET ALI KHAN v KUMOLA KOONWAR [11 W R 381]

34. ——— Suit to set aside sale—A sale having been effected by order of a Deputy Collector an appeal was made to the Collector who set aside the sale. The Commissioner however considering that the Collector had no jurisdiction and that no injury had been made out reversed the order of the Collector. Held that the sale did not become confirmed or otherwise final and conclusive before the date of the Commissioner's order and therefore a suit within one year of that order was in time. PRANNATH ROY v TROYLUCKONATH ROY [14 W R, 281]

35. ——— Suit to set aside sale for arrears of Government revenue—A suit to set aside a sale for arrears of Government revenue must be brought within one year from the date when the sale becomes final and conclusive. PAJ CHUNDER CHUCKREBUTTY v KINOO KHAN [I L R, 8 Calc, 329]

36. ——— Suit brought to set aside sale for arrears of revenue—Where lands had been sold for alleged arrears of revenue and bought in for Government but the sale had not been registered under s 38 of Madras Revenue Recovery Act (II of 1864)—Held that a suit brought to set aside the sale after one year from the date thereof against a bona fide purchaser for value from Government was barred by limitation. KARTHA LINGA v VASEUDEVA BASTHI [I L R, 6 Mad, 148]

37. ——— Sale in execution of decree for arrears of revenue—Suit to recover land—The land of D was improperly sold in execution of a

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the person who was so put in possession. *Held* (reversing the decree of the Civil Court) that the order of the Civil Court was not a summary decision within the meaning of cl. 5, s. 1, and that the suit was not barred. That clause was only applicable to orders which the Civil Courts were empowered to pass deciding matters of disputed property raised for hearing and determination by a summary proceeding between the parties disputing. *APPUNDY IBRAM SAHIB v. SAM* 4 Mad., 297

10. ———— *Suit against order of Mamlatdar under Bom. Act V of 1864.*—Although a Mamlatdar's order under the last clause of s. 1 of Bombay Act V of 1864 is a summary decision, a suit in the Civil Court to establish a right against the operation of such order is not a suit to set aside the order itself, but for possession in opposition to that recognized by Mamlatdar's order, and is not therefore within the limitation of one year under cl. 5, s. 1, Act XIV of 1859. *BABAJI v. ANNA* . . . 10 Bom., 479

11. ———— *Suit for proceeds of sale in execution.*—A suit to recover the proceeds of sale in execution of a decree alleged to have been drawn out by defendant by virtue of an order of a Civil Court, under s. 270, Act VIII of 1859, is in reality a suit to alter or set aside a summary decision of a Civil Court, and is governed by the limitation of one year prescribed by cl. 5, s. 1, Act XIV of 1859. *DWARKANATH BISWAS v. ROY DHUNPUT SINGH* [17 W. R., 227

12. ———— *Suit for money paid into Court by defendant, but recovered from third person in execution of decree.*—A suit to recover money paid by the defendant into Court which was payable to the plaintiff, and which was afterwards recovered by the defendant in the execution of a decree against a third person, under an order of the Court executing the decree, was held not barred by limitation, under the provisions of Act IX of 1871, second schedule, art. 15, by reason of not having been instituted within one year from the date of the order. *DEBI DAS v. NUR AHMED* 7 N. W., 174

13. ———— *Suit for refund of sale-proceeds paid in accordance with order for distribution under s. 295, Civil Procedure Code, 1882—Multifariousness.*—In execution of a decree against six persons the plaintiffs had certain property brought to sale, the proceeds of which were brought into Court. The defendants, who held five separate decrees against some of the persons against whom the plaintiffs' decree was obtained, applied to have the amount in Court rateably distributed; and in accordance with an order of the Court, dated 13th September 1880, this was done, the proceeds being distributed in proportion to the amounts of the decrees. In a suit brought on 24th August 1883 against the defendants, on the allegation that the plaintiffs were entitled to the whole of the proceeds, or in the alternative for distribution on a different principle,—*Held* the suit was one to set aside the order, and not having been brought within one year from the date of the order was barred by limitation under art. 13, sch. II of Act XV of 1877. *Ram Kishen v. Bhawani Das.*

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I. L. R., 1 All., 333, distinguished. GOWRI PROSAD KUNDU v. RAM RATAN SIRCAR

[I. L. R., 13 Calc., 159

14. ———— and art. 62—*Civil Procedure Code (Act XIV of 1882), s. 295—Suit for a refund of assets paid to a wrong person under s. 295.*—An order under s. 295 of the Code of Civil Procedure (Act XIV of 1882) refusing a decree-holder's application for a rateable distribution of the assets realized by a sale or otherwise in execution of a decree is not an order "in a proceeding other than a suit" within the meaning of art. 13 of the Limitation Act (XV of 1877). On the 21st August 1885 the defendant attached, in execution of a money-decree, certain immoveable property belonging to his judgment-debtor. On the 18th January 1886, plaintiff, who held another decree against the same judgment-debtor, applied, under s. 295 of the Code of Civil Procedure, for a rateable distribution of the assets to be realized by the sale of the property attached. On the 19th March, 1886 the attached property was put up for sale in execution of the defendant's decree. The defendant was allowed to buy the property at the sale and set off the purchase-money against the amount due to him under the decree under s. 294, and no money was therefore paid into Court. On the 14th June 1886 the Court held that, as no money had been paid into Court on account of the sale, no further proceedings could be taken on the plaintiff's application for a rateable share of the assets, and his application was accordingly rejected. Thereupon the plaintiff sued the defendant to compel him to refund the assets wrongly paid to him. The Court of first instance decided in plaintiff's favour. The lower Appellate Court rejected the plaintiff's claim as barred by art. 13, sch. II of the Limitation Act, on the ground that the suit was not brought within one year from the date of the Court's order refusing the plaintiff's application under s. 295 of the Code of Civil Procedure. *Held* that the suit was not governed by art. 13 of the Limitation Act. The order made under s. 295 of the Civil Procedure Code was no bar to the suit, and a suit to set it aside was unnecessary. *Gowri Prosad Kundu v. Ram Ratan Sircar, I. L. R., 13 Calc., 159, dissented from. VISNU BHIKAJI PHADKE v. ACHUT JAGANNATH GHATE* [I. L. R., 15 Bom., 438

15. ———— *Mortgage—Sale by first mortgagee—Arrears of rent—Lien—Claim by puisne mortgagee on proceeds of sale.*—Certain land was mortgaged to A with possession to secure the repayment of a loan of Rs 2,000 and interest. It was stipulated in the deed that the interest on the debt should be paid out of the profits, and the balance paid to the mortgagors. By an agreement subsequently made, it was arranged that the mortgagors should remain in possession and pay rent to A. A obtained a decree for Rs 2,000 and arrears of rent and costs and for the sale of the land in satisfaction of the amount decreed. The land was sold for Rs 2,855 in March 1881. In May 1881 B, a puisne mortgagee, applied to the Court for payment to him of Rs 500 of this sum, alleging that A was entitled only to Rs 2,000 and Rs 250 costs.

LIMITATION ACT, 1877—continued.

aside the order of release: and the rule of limitation applicable to his case is not in s. 246 of Civil Procedure Code, which would allow one year, but in cl. 15, sch. II of Act IX of 1871. **MATONGINY DASSEE v. CHOWDHRY JUNMUNJOY MULICK** 25 W. R., 513

22. ——— *Suit to recover attached property to which claim has been disallowed.*—A person who has been unsuccessful in a proceeding under s. 246 of Act VIII of 1859, and who sues to recover the attached property from the purchaser at the Court sale, may be said to sue, not to set aside the sale, but to set aside the order of the Court under s. 246, and therefore the suit must be brought within one year as provided in art. 15 of the Limitation Act, 1871. The decision in *Jetti v. Hossain, I. L. R., 4 Bom., 23* note, qualified. **VENKAPA v. CHENBASAPA** . . . **I. L. R., 4 Bom., 21**

23. ——— *Suit to remove attachment—Adverse possession.*—In a suit for a partition of family property in the possession of the plaintiff and defendants, part of the property was attached at the instance of one of the defendants in 1852, and the remainder of the property in 1864. Nothing was done with regard to the first attachment, but in 1865 a petition was presented by the plaintiff praying for the removal of the attachments. The petition was rejected and the plaintiff brought this suit within one year from the date of the rejection of his petition. The plaintiff and defendants remained in possession notwithstanding the attachments. *Held* that the suit was not barred by lapse of time. **MALRAJA alias KRISHNAMA RAJAH v. NARAYANASAMY RAJAH** [4 Mad., 281]

24. ——— *Suit to establish title to property ordered to be sold in execution—Suit to set aside summary order.*—The plaintiff's property was ordered to be sold in execution of a decree to which the plaintiff was not a party. The plaintiff appeared and asked the Court to release the property from attachment, but the Court refused his application, under s. 246, Act VIII of 1859, and ordered the property to be sold. *Held* that a suit to establish the plaintiff's right to such property was not a suit to set aside a summary order within Act IX of 1871, sch. II, cl. 15. **KOYLASH CHUNDER PAUL CHOWDHRY v. PREONATH ROY CHOWDHRY**

[**I. L. R., 4 Calc., 610; 3 C. L. R., 25**

25. ——— *Civil Procedure Codes (Act VIII of 1859, s. 246, and Act X of 1877, ss. 280, 281, and 282).*—*V* (defendant No. 1) obtained a decree against *W* and, in execution thereof, attached certain immoveable property as belonging to his judgment-debtor. The plaintiffs, who were *W*'s five brothers, thereupon applied for the removal of the attachment under s. 246 of the Civil Procedure Code (VIII of 1859), but their application was rejected on the 24th July 1875, and the property was sold by the Court to *K* (defendant No. 2) on the 16th and 17th February 1876. The sale was confirmed on the 18th March 1876. The plaintiffs brought a suit on the 17th March 1877 against *V* and *K* (the judgment-creditor and auction-purchaser), alleging that the property was the joint ancestral property

LIMITATION ACT, 1877—continued.

of themselves and their brother *W*, and was not liable to attachment and sale for his separate debt. They prayed that the sale should be set aside. The Subordinate Judge dismissed the suit as barred by art. 15, sch. II of the Limitation Act (IX of 1871). His order was reversed, on appeal, by the District Judge, who held that art. 14, sch. II of the Limitation Act, applied to the case. *K* thereupon appealed to the High Court. *Held* that art. 15, and not art. 14, of sch. II of Act IX of 1871, applied to the case, and that the suit was barred. The intention of the Legislature in passing s. 246 of the Civil Procedure Code (Act VIII of 1859) was that the order made under that section should be a final bar to the plaintiff's right, unless such a suit, as that section prescribed, was brought to re-try the question of that right; and if on such action being brought, the Court on the trial held that the plaintiff had established his right, its ruling would amount to a reversal of the order made under s. 246, and the suit would fall within art. 15 of sch. II of the Limitation Act (IX of 1871), which is substituted for the limitation provided by the twelve repealed words in s. 246 of Act VIII of 1859. **Settiappan v. Sarat Sing, 3 Mad., 220**, followed. **Koylash Chunder Paul Chowdhry v. Preonath Roy Chowdhry, I. L. R., 4 Calc., 610**, referred to and discussed. **KRISHNAJI VITHAL v. BHASKAR RANGNATH** . . . **I. L. R., 4 Bom., 611**

26. ——— *Order declaring that Court has no jurisdiction.*—The period of limitation prescribed by art. 15, sch. II, Act IX of 1871, for a suit to set aside an order of a Civil Court, does not apply where the order simply amounts to a declaration that the Court considers it has no jurisdiction to act in the proceeding before it. **KRISTODASS KUNDOO v. RAMKANT ROY CHOWDHRY**

[**I. L. R., 6 Calc., 142; 7 C. L. R., 396**

27. ——— *Suit to recover property sold in execution—Civil Procedure Codes (Act VIII of 1859, s. 246, and Act X of 1877, ss. 280, 281, and 282).*—Certain property, which the plaintiff alleged to belong to her, was sold in execution of a decree obtained by the purchaser of the property at the auction-sale, against a third party. The plaintiff put in a claim to the property under s. 216 of Act VIII of 1859, which claim was rejected on the 6th of September 1873. The plaintiff, on the 10th of January 1878, brought a suit to recover possession of the property sold. *Held* that the suit was not barred by art. 15, sch. II of Act IX of 1871, the suit not being one to set aside a summary order within art. 15 of the schedule to that Act. **Koylash Chunder Paul Chowdhry v. Preonath Roy Chowdhry, I. L. R. 4 Calc., 610**, followed. **LUCHMI NARAIN SINGH v. ASSRUP KOER** . . . **I. L. R., 9 Calc., 4**

28. ——— *Execution of decree—Res judicata—Act VIII of 1859, s. 246—Civil Procedure Code (Act X of 1877), s. 278.*—In the course of certain execution proceedings in execution of a decree for arrears of rent, the decree-holder attached a tenure belonging to the judgment-debtor, who, pending the attachment, sold it to *A* on the 21st March 1869. *A* then applied, under s. 213

LIMITATION ACT, 1877—continued

H510 pul to A on account of rent on the 27th May 1881. Held, on second appeal, that the suit was not barred by art 13 of the Limitation Act, neither that article nor art. 12 being applicable to the case, that B was entitled to recover the sum claimed. *SIVARAMA v SUBRAMANYA*

[1 L R, 9 Mad., 57]

recover possession from the successful claimant of the property released, was not governed by the limitation prescribed by cl 5 s 1. *BHUTCHALL BHUTT v. ABDOL HOSSEIN* 8 W R., 93

17 ——— *Order of Judge on claim to attached property—Summary decision—Property being attached under a decree obtained before Act VIII of 1859 a third party claimed to be entitled as against the judgment creditor under a bill of sale. The Judge enquired into his claim found that the assignment was fraudulent, and ordered that the property should be sold under the decree. Held that the order of the Judge was a summary decision of a Civil Court within s 1, cl 5 and that a suit by the claimant for the recovery of the property instituted after the expiration of a year from the date of the order was barred by that clause. *KHURRUT ALLY v KHURBUCK DHAREE SINGH* Marsh, 520*

18 ——— *Suit to have property declared not liable to seizure in execution of a decree—The plaintiff sued to obtain a decree declaring that the ancestral land possessed by the family of the plaintiff was not liable to seizure and sale in satisfaction of an ex parte decree obtained by the defendant in a suit against the yejaman of the plaintiff's family on the ground that the decree had been obtained collusively and fraudulently for a debt alleged to have been contracted for the benefit of the family. The decree against the yejaman was passed on the 22nd June 1855, and upon attachment of the family property...*

19 ——— *Claim for possession of property—On payment of certain property the plaintiff and defendant preferred their respective claims thereon. The plaintiff's claim was disallowed, but the defendant's claim...*

LIMITATION ACT, 1877—continued

was allowed. The plaintiff after the lapse of a year from the date of the order disallowing his claim sued to recover possession of the said property. The...

[2 B L R, A C, 254]

C. DOORGARAM ROY v NURO SINGH DEB

[11 W. R., 134]

20 ——— *Suit to set aside order releasing property from attachment—Irregular attachment—Deduction of time when appeal was pending—In 1852 K sued A and M to recover the amount with interest of a bond executed by M (who was A's general agent) in the name of H on the permission of the plaintiff for the purpose of paying off the debts of A. The Principal sudder Ameen decreed the case against V with costs, and released A from K's claim. In appeal to the Sudder Court the plaintiff obtained a decree with interest and costs against A as well as against M. In execution K prayed on 2nd December 1853 for the attachment and...*

upheld, but it was declared that this would be a bar to a regular suit. She accordingly applied for a reversal of the Judge's order for the attachment of the decree, and as being collusive as to the sale of the property in question as that of her husband. The order was decreed on appeal, and was affirmed by the High Court. Held that the order of 2nd March 1859 was wrong in law, and that the plaintiff was entitled to a decree in her favour for the attachment void. Held that the plaintiff's application for appeal from the order of 2nd March 1859 was not barred by the Limitation Act, 1877, and that the order of the High Court was also void. Held that the plaintiff's application for a decree in her favour for the attachment void was not barred by the Limitation Act, 1877, and that the order of the High Court was also void. Held that the plaintiff's application for a decree in her favour for the attachment void was not barred by the Limitation Act, 1877, and that the order of the High Court was also void.

21 ———

Particulars of a suit for possession of property—The plaintiff's claim was disallowed, but the defendant's claim...

LIMITATION ACT, 1877—continued.

revenue.—A suit to set aside an order of a Commissioner directing the plaintiff to pay Government revenue at a certain rate was formerly held to be governed by cl. 16 of s. 1 of the Act of 1859; it would now probably be governed by this article. **KEBUL RAM v. GOVERNMENT** . 5 W. R., 47

4. ———— *Suit to set aside order of Government officer—Order null and void.*—Art. 14 of sch. II of the Limitation Act with reference to suits to set aside orders of officers of Government does not apply to a case where the order is an absolute nullity. **BEJOY CHAND MAHATAB BAHADUR v. KRISTO MOHINI DAS** . I. L. R., 21 Cal., 626

5. ———— *Khoti Settlement Act (Bom. Act I of 1880), ss. 20, 21, and 22—Act or order of Settlement officer—Dhara lands—Suit for a declaration that lands were khoti lands—Jurisdiction of Civil Court—Collector, Power of—Adverse possession—Cause of action.*—A Survey Settlement officer decided in the year 1882 that certain lands situate at the khoti village of Tadil, in the Ratnagiri District, were dhara lands of S and another, but the entry in the survey register that they were dhara lands was not made till 1883. In the meanwhile, F and others, who were the khots of the village, made an application to the special Survey officer to revise the decision of the Settlement officer of the year 1882, and the special Settlement officer having rejected this application in 1885, they brought the present suit in 1887 against S and others for a declaration that the lands were their khoti lands. The Judge dismissed the suit on the ground that the Settlement officer's decision being final under ss. 20 and 21 of the Khoti Settlement Act (Bombay Act I of 1880) and it having not been set aside within one year from its date, the suit was time-barred under art. 14, sch. II of the Limitation Act (XV of 1877). *Held*, reversing the decree, that the claim was not time-barred. Under ss. 20 and 21 of the Khoti Settlement Act, it is the "decision" on the rival claims of the parties which is open to reversal by the Civil Court, and not the consequences of that decision, which as provided by s. 22 are left to the Collector himself to undo or modify in accordance with the decision of the Civil Court. *Held*, further, that s. 21 does not contemplate any "order" being made by the Survey officer between the parties; and even if framing the register be regarded as an "act" of the Survey officer, s. 22 provides for its being amended by the Collector himself, in accordance with the decision of the Civil Court. *Held*, further, that although the defendants might have paid only the assessment before 1878-79, their adverse possession of the lands as dhara did not begin to run against the plaintiffs until 1878-79, when such a claim was actively advanced by the defendants. The plaintiffs' cause of action arose in 1882, when the Survey officer determined that the lands were dhara, and the present suit, which was brought within six years to reverse that decision, was therefore in time. **FAKI GULAM MOHIDIN v. SAJNAK** . I. L. R., 18 Bom., 244

6. ———— *Land Revenue Code (Bom. Act V of 1879), ss. 37, 39, 135—Land presumably the property of the plaintiff—Plaintiff in uninterrupted possession—Revenue survey—Entry of the*

LIMITATION ACT, 1877—continued.

land in the register as Government waste land—Order of the Revenue Commissioner directing land to be given to defendant No. 2—Plaintiff's dis-possession—Suit against Secretary of State and defendant No. 2—Nature of the Revenue Commissioner's order—Settling aside of the order.—A certain land which the plaintiff alleged was his property and was uninterruptedly in his possession till the 16th November 1895 was at the introduction of the revenue survey in 1882 entered in the register as Government waste land. On the 12th November 1895, the Revenue Commissioner, on appeal against the order of the Collector, ordered it to be given to defendant No. 2 on his paying the assessment due since the survey settlement. This order was communicated to the plaintiff on the 20th November 1895. On the 16th November 1895, the plaintiff was ousted by the order of the Collector, and defendant No. 2 was placed in possession. The plaintiff thereupon, on the 15th November 1896, filed the present suit in the District Court against the Secretary of State for India as defendant No. 1 and defendant No. 2 praying (1) to have set aside the order passed by the Revenue Commissioner, (2) to have his right to the land established, and (3) to obtain possession with mesne profits. Defendants contended that the suit was time-barred under art. 14, sch. II of the Limitation Act (XV of 1877), not having been brought within one year from the 12th November 1895, the date of the Revenue Commissioner's order. *Held* that the plaintiff could maintain a suit for the recovery of his land without having the order of the 12th November 1895, passed by the Revenue Commissioner, set aside. *Held*, further, that the order of the Revenue Commissioner was not such an order as is contemplated by art. 14, sch. II of the Limitation Act (XV of 1877), and that in itself it gave no cause of action, and needed no setting aside. The cause of action was given by the act of the Collector dispossessing the plaintiff on the 16th November 1895, and as the suit was brought within one year of that date, it was in time. **SURANNANNA DEVAPPA HEDGE v. SECRETARY OF STATE FOR INDIA**

[I. L. R., 24 Bom., 435]

7. ———— *Estates Partition Act (Beng. Act VIII of 1876), ss. 116 and 150—Right of suit—Suit for possession.*—A suit for possession of land of which the owners have been dispossessed in pursuance of an order of the Collector under s. 116 of the Estates Partition Act (Bengal Act VIII of 1876), will lie even though no suit is brought to set aside the Collector's order under s. 150. Art. 14 of sch. II of the Limitation Act (XV of 1877) does not bar such a suit. **LALOO SINGH v. PURNA CHANDER BANERJEE** . I. L. R., 24 Cal., 149

——— art. 15 (1871, art. 17; 1859, s. 1, cl. 4).

1. ———— *Suit to set aside transfer of land made by revenue authorities.*—A suit to set aside a transfer of land made by the revenue authorities for arrears of Government revenue comes within the words of cl. 4, s. 1, Act XIV of 1859.

LIMITATION ACT, 1877—continued

of Act VIII of 1859 for an order to release the

rent against the same defendant and in execution thereof again attached the tenure *A* applied under s 278 of the Code of Civil Procedure to have the

have been brought within one year 110 1 1869 On March 1869 On appeal to the High Court—*Held* that the suit was not barred by limitation nor as *res judicata* **UMESH CHUNDEE ROY v. RAJ BUL LUS SEN** . . . I L R, 8 Calc., 279 [10 C L R, 204

29 ——— Order substituting one judgment debtor for another—Sale or transfer of *dena powna*—*A* the proprietor of an indigo concern which comprised a *patni* talukh, after mortgaging the entire concern to *B*, allowed the *patni* talukh to be sold for arrears of rent under Regulation VIII of 1819, *C*, the *dar patnidar* of the talukh whose rights were thus extinguished, then sued and obtained a decree for damages against *A*. After *C* had obtained this decree against *A*, *A* sold his equity of redemption in the talukh mortgaged concern to *B* and by this sale all the *dena* and

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30 ——— Civil Procedure Code (Act VIII of 1859) s 269 Summary proceedings under—Neglect to set aside order passed in such proceedings within one year by purchaser at a Court sale—Suit to establish title to property by such purchaser—At a Court sale held on the 15th November 1871 in execution of a decree the plaintiff's deceased husband purchased a house but neglected to register his sale certificate. In attempting to recover possession he was obstructed by the defendant who claimed the property as her own. Summary proceedings under s 269 of Act VIII of 1859 were thereupon instituted against the defendant and the defendant's claim was upheld by an order passed on the 7th November 1872. In the meantime the plaintiff's husband having died plaintiff filed on the 31st March 1873 a regular suit to establish her title. On the 8th July 1873 she

LIMITATION ACT, 1877—continued

obtained a second certificate and registered it. The Court of first instance awarded her claim but on

held her suit not maintainable. On appeal by plaintiff to the High Court—*Held* confirming the decree of the lower Appellate Court that plaintiff's

date **BAI JANNA v. BAI ICHHA**
[I L R, 10 Bom, 604

art. 14 (1871, art 18)

See BOMBAY LAND REVENUE ACT s 135
[I L R, 15 Bom., 424

1. ——— Suit for land of which a *pottah* has been granted by Collector after demarcation—Suit to set aside official act—Plaintiff in 1877 claimed possession of land which had been demarcated as *poramboke* in 1860 and of which a

2. ——— Suit for declaration of title—Suit to set aside an order of revenue authorities—Land Registration Act (VII of 1878) s 59—The Civil Court has no power to set aside an order made by the Land Revenue authorities and when a plaintiff which title to and such player may be treated as mere surplusage. When there fore a plaintiff was filed containing separate prayers for the above relief and when the original Court

decree dismissing the suit as having been brought more than a year after the date of such orders

3. ——— Suit to set aside order of Commissioner directing payment of Government

LIMITATION ACT, 1877—continued

CHITRO NARAIN SINGH TEKAIT v ASSISTANT
COMMISSIONER OF THE SOUTHAL PERGUNNAHS
[14 W R, 203]

2 ————— Suit to establish right to
hold land rent free—Where a person claiming to

COLLECTOR OF BELGAUM

11 Dunt, 1

art 16 (1871, art 18, 1859 s 1,
cl 4)

Act XII of 1859 s 1 cl 4—
4 of s 1 of Act XIV of 1859

by
BHAWANEE

2 N W, 102

art 17 (1871, art 19)

Suit for compensation for land
Cause of action—In a cause decided under Act
XIV of 1859 the cause of action in a suit for con

UDDEA

11 W R, 1

This would not now be la v

art 19 (1871, art 21)

See FALSE IMPRISONMENT

[I L R, 9 Bom, 1

art 23 (1871 art 25, 1859 s 1,
cl 2)

1 ————— Suit for malicious pro
secution—The limitation of one year prescribed by
cl 2 s 1 for bringing a suit for damages for injury
caused to reputation by malicious prosecution in a
Criminal Court runs from the date on which the
plaintiff was discharged from custody and not
from the date on which the criminal charge was
preferred OBEIDUL HOSSAIN v GOLUCK CHUNDER
[8 W R, 443]

2 ————— Suit for damages for
malicious statement—Cause of action—In an
action for damages for making a false and malicious
statement in consequence of which the Magistrate
took proceedings in the course of which the plaintiff's
house was searched and he alleged he was thereby

LIMITATION ACT, 1877—continued

constitute a cause of action occurred within a year

3 ————— Malicious prosecution—
Termination of prosecution—Presentation of revisi
on against acquittal—Commencement of
period of limitation—A suit for damages for
malicious prosecution was brought more than one
year from the date of the plaintiff's acquittal but
within a year from the dismissal of a revision on
petition on which had been filed against the acquittal
On its being contended that the period of limitation

art 24 (1871, art 24, 1859 s 1
cl 2)

Cause of action—Suit for de
famation—Held that the cause of action in a suit
for damages on account of defamation of character
arises on the date of the publication of the letter
containing the defamatory matter and that a suit
not instituted within one year from that date is
barred by cl 2 s 1 Act XIV of 1859 MAHOMED
IMDADALLY v AMEER ALY 2 Agra, 47

art 29 (1871, art 30, 1859, s 1,
cl 2)

1 ————— Wrongful seizure of goods
Injury to personal property—Wrongful seizure
of goods under process of law was held to be not
an injury to personal property within the meaning
of cl 2 s 1 Act XIV of 1859 INDERCHUND v
NUNDERAM SING Cor, 3

But was governed by cl 16 of the same section
NCHENUTOOLLAN v ROOP SOVA BIKER

[7 W R, 499]

2 ————— Suit for damages for dete
t on of bullocks—Plaintiff's bullocks having been
seized in execution of a decree obtained by defend
ant against third parties plaintiff put in a claim and
the bullocks were released on 15th January 1871.
On 16th January 1871 plaintiff instituted an action
for damages caused by the detention of the bu
locks Held that the case fell under Act IX of
1871, sec II art 30 and that the suit was barred
by limitation PAM SINGH MOHAPATRE v EXE
CUTOR MANJEE SONTAL 24 W R, 288

3 ————— Suit for money taken in
execution of a decree—Compensation—Damages
for loss of gain or interest upon money and suit to
recover money wrongfully taken under a decree is a
suit for compensation to which the limitation of one

LIMITATION ACT, 1877—continued.

barred by art. 43 of sch. II of Act IX of 1871, and that nothing in the law of limitation prevented the establishment of such a right as that denied, merely because the first act of interference with it was more than a stated number of years ago. Such acts are not continuous like possession, and their only operation is to create, where often and consistently repeated during a long period, a presumption of their lawful origin. **ANANDRAV BHUKAJI PHADKE v. SHANKAR DASI CHARYA** . . . I. L. R., 7 Bom., 323

3. — and art. 143—*Suit for damages for trespass—Suit to recover immovable property from trespasser.*—The limitation of three years provided in cl. 43, sch. II of the Limitation Act (IX of 1871) applies only to suits for damages on account of trespass, and not to suits to recover immovable property from a trespasser, for which the period of limitation is twelve years, as provided by cl. 143. **JOHARMAL v. MUNICIPALITY OF AHMED-NAGAR** . . . I. L. R., 8 Bom., 580

4. — *Suit to have drain closed—Cause of action.*—The cause of action in a suit in which the plaintiff claimed to have a drain closed on the ground that it passed through his land, was held to count from the last act of trespass, each act of trespass causing a fresh right of action, and that the suit was not barred by cl. 16, s. 1, Act XIV of 1859. **RAMPHUL SAHOO v. MISREE LALL** . 24 W. R., 97

art. 40 (1871, art. 11: 1859, s. 1, cl. 2).

— *Suit for account of profits—Infringement of patent—Copyright Act (XX of 1847), s. 16—Patent Act (XI of 1859), s. 22.*—In a suit for an account of profits obtained by the infringement of an exclusive privilege, the period of limitation, the taking of an account being only a mode of ascertaining the amount of damages, is the same as the period of limitation for an action for damages on the same ground. viz., the period prescribed by art. 11, sch. II, Act IX of 1871. **KINMOND v. JACKSON**

[I. L. R., 3 Cal., 17]

art. 42.

There was no special provision under the former Acts, 1859 and 1871, for damages caused by a wrongful injunction.

— *Suit for damages caused by wrongful injunction.*—It was under the Act of 1859 doubted whether such a suit was governed by cl. 2, s. 1 of that Act, the Court inclining to the opinion that it was not. **NANDA KUMAR SHAHA v. GOUR SANKAR**

[5 B. L. R., Ap., 4: 13 W. R., 305]

Under both the former Acts, therefore, the general limitation of six years would probably have been applicable: now under art. 42 of the present Act, the period is three years from the cessation of the injunction.

art. 44—*Suit for possession by a person on attaining majority of property sold by guardian.*—A suit by a person to recover possession of

LIMITATION ACT, 1877—continued.

land sold by his guardian during his minority without legal necessity is governed by art. 44, sch. II of the Limitation Act, and must be brought within three years from the time when the minor attains majority. **SATIS CHANDRA GUHA v. CHUNDER KANT PINE**

[3 C. W. N., 278]

art. 45 (1871, art. 44; 1859, s. 1, cl. 6).

1. — *Assessment for revenue or rent, Order for—Award.*—An assessment for revenue or rent by a Collector was not a judicial award within the meaning of cl. 6 of s. 1, Act XIV of 1859. The term "award" as used in that clause means an adjudication on rights as between rival claimants, made by a Revenue officer under the judicial powers conferred by the regulations mentioned in such clause. **HUREE MOHUN GHOSAL v. GOVERNMENT**

[2 N. W., 226]

2. — *Judicial award—Proceeding of Settlement officer as to cess.*—Held that the proceeding of the Settlement officer representing a cess as a source of income to the zamindar was not a judicial award, and the limitation provided in cl. 6, s. 1, Act XIV of 1859, was not applicable to a suit to set aside that proceeding. **RAM CHUND v. ZAKHUR ALI KHAN** . . . 1 Agra, 134

3. — *Order of Revenue authorities as to registration of names.*—Held that an order passed by Revenue authorities for entry of names in a proprietary register, not being passed after a trial in a suit of the nature referred to in cl. 2, s. 23, Regulation VII of 1822, was not an order in a suit to which the term of limitation mentioned in cl. 6, s. 1, Act XIV of 1859, applies. **MADHO SINGH v. JEHANGEER**

[2 Agra, 229]

4. — *Award of Revenue Court—Judicial award—Limitation Act, 1859, s. 1, cl. 6.*—Cl. 6 of s. 1 of Act XIV of 1859 applies only to a judicial award, and not to a determination by the Revenue Courts of a purely executive character. **Madho Singh v. Jehangeer**, 2 Agra, 229; **Hurree Mohan Ghosal v. Government**, 2 N. W., 226; and **Sukhai v. Daryai**, I. L. R., 1 All., 374, referred to. **KRISTO MONI GUPTA v. SECRETARY OF STATE FOR INDIA IN COUNCIL** . . . 3 C. W. N., 99

5. — *Entry made by Settlement officer.*—An entry made by a Settlement officer in the report of a co-sharer and on the strength of the report of the patwari and canoongee in the absence of the party against whom it is made, was not an award within the provisions of s. 1, cl. 6, of Act XIV of 1859. **KINBAR DASHA v. GOKULAN** 3 Agra, 316

6. — *Suit to contest adjudication of boundaries by Revenue Court under Act I of 1847.*—An adjudication of the boundaries by the Revenue authorities under Act I of 1847 is not final and conclusive, but is, like any other judicial award made under Regulation VII of 1822, open to question by regular suit in the Civil Court within three years (cl. 6, s. 1, Act XIV of 1859). **SUJJAD v. SAHIT ALI** . . . 3 Agra, 140

LIMITATION ACT, 1877—continued

the provision of art 36 **SURAT LALL MONDAL v**
UMAR HAJI . I L R, 22 Calc, 877

6 ————— *Suit for damages for cut-*
ting and carrying away crops—Act XV of 1877,
ss 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

CJ (TREVELYAN J concurring)—Assuming that
the case does not come within the terms of art 36,
the case is governed by art 49. The crops though

per GHOSH, J—Atk 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100
Surat Lall Mondal v Umar Haji, I L R, 22

red to a case in which possession of immoveable prop-
erty was withheld. Art 36 therefore applied to
the case *Essoo Bhayaji v Steamship "Savitri,"*
I L R, 11 Bom, 133, referred to *Pandah Gazi*
v Jennudi, I L R, 4 Calc 685, dissented from
by TREVELYAN, J. *MANGUN JHA v DOLMIN GOLAB*
KOEN . I L R, 25 Calc, 692
[2 C W N, 285]

7 ————— *Proceeding under Com-*

8 ————— *Application by liquidator*
for money improperly distributed to shareholders
—An application was made in 1894 under the Com-
panies Act of 1882 s 214 by an official liquidator

9 ————— *Chairman of Municipal*
Council—Principal and agent—Liability for em-
bzzlement by manager—During the tenure of his
office by the Chairman of a Municipal Council, the
manager embezzled sums of money On the Council,

LIMITATION ACT, 1877—continued.

within three years, but more than two years there-
after, suing its late chairman to recover the amount
lost by reason of the embezzlement on the ground

art 36, and that the suit was therefore barred by
limitation. *SRINIVASA AYYANGAR v MUNICIPAL*
COUNCIL OF KARUR . I L R, 22 Mad, 342

————— art 37 (1871, art 31)

See **PRESCRIPTION—EASEMENTS—RIGHTS**
OF WATER . I L R, 8 Calc, 394

The period for a suit for obstructing a water-
course is changed from two to three years by the Act
of 1877

————— *Suit for obstructing water*
course—Under the Act of 1859 a suit for obstructing
a water course was held to be governed by the general
limitation of six years under s 1, cl 10 of that Act,
or if the plaintiff were out of possession, by the
limitation of twelve years *BUDDEN THAKOOR v*
SUNKER DOSS W R., 1884, 106

VISWAMBHARA RAJENDRA DEVA GARU v SARADINI
CHARANA SAMANTARAYA GARU . 3 Mad, 111

————— art 39 (1871, art 43)

1. ————— *Suit for compensation for*

taking pos-
The District
the ground
antiff from
s barred by
s 36 37 39 or 40 of sch II of the Limitation Act,
1877. *Held* that the plaintiff was entitled to sue for
compensation for the trespass within three years from
the date on which the defendants' possession ceased,
and that the defendants were liable for any loss
suffered within three years preceding the date of the
suit. *NARASIMMA CHAVERA v RAGUPATHI CHAVERA*
[I L R, 6 Mad., 178]

LIMITATION ACT, 1877—continued.

the date of the award. **MOZAFFER ALLY v. GIRISH CHANDRA DAS**

[1 B. L. R., A. C., 25: 10 W. R., 71

16. ———— *Order of Board of Revenue under Beng. Reg. VII of 1822—Suit for possession and declaration of title.*—An order of the Board of Revenue under Regulation VII of 1822, declaring a particular person entitled to a settlement of certain lands, is no ground for declaring a third person, who was no party to those settlement of proceedings in any stage, debarred under art. 44, sch. II of Act IX of 1871 (corresponding with art. 45, sch. II of Act XV of 1877), from bringing a suit to establish his title to, and to recover possession of, the lands after three years and within the general law of limitation. **KANTO PRASAD HAZARI v. ASAD ALI KHAN**

[5 C. L. R., 452

See SHIBO DOORGA CHOWDHRAIN v. HOSSAIN ALI CHOWDHRY 6 W. R., 218

17. ———— *Cause of action, Date of.*—*A* appealed from the award of a Survey officer to the Commissioner, who summarily rejected the appeal. The order of the Commissioner was confirmed by the Board of Revenue without entering into the merits. *Held* that the period of limitation ran from the date of the order of the Board of Revenue. **KRISHNA CHANDRA DAS v. MAHOMED AFZAL**

[1 B. L. R., A. C., 11: 10 W. R., 51

art. 46 (1871, art. 45; 1859, s. 1, cl. 6).

1. ———— *Order of Settlement officer—Award.*—An order of a Settlement officer upon an enquiry made at the instance of the zamindar, and for the purpose of the preparation of the record, in the course of which enquiry information was given both in support of and against the zamindar's claim to a cess, was not an award of the nature contemplated by cl. 6, s. 1, Act XIV of 1859, and the three years' period of limitation was inapplicable to a suit to assert such claim. **MAHOMED ALI KHAN v. OMRAO SINGH** 2 N. W., 425

2. ———— *Suit for possession—Boundaries—Partition.*—In a suit by the purchaser of one estate to recover certain lands alleged to belong to his estate, which the defendants held as a part of another estate, the plaintiff needlessly prayed that a certain order passed in the cause of the batwara of the defendant's estate should be set aside. As the defendant failed to show that the Collector, in laying down the boundaries of the estate then under batwara, was proceeding under Regulation VII of 1822,—*Held* that the map made by him in carrying out the batwara of another estate was not an award binding on the defendant, and that the case therefore was not barred by limitation under cl. 6, s. 1, Act XIV of 1859. **RUGHOOBUR SINGH v. HURREE PERSHAD** 6 W. R., 75

3. ———— *Survey award—Suit for possession—Res judicata.*—In a thakbust map land was demarcated as belonging to *A*. *B* claimed that it belonged to him jointly with *A*. On 18th Novem-

LIMITATION ACT, 1877—continued.

ber 1858, the map was rectified by demarcating the lands to *A* and *B* jointly. *B* afterwards brought a suit against *A* in the Munsif's Court to recover the value of some mangoes which grew on two plots of the land in question; and it was decided on 12th December 1864 in favour of *B* on the ground that the plots belonged to *A* and *B* jointly. On 11th December 1865, *A* brought his suit against *B* for a declaration of right and confirmation of possession, to set aside the survey award, and for amendment of the thakbust map. *A* alleged that he was no party to the thakbust proceedings, and that he had been in possession ever since. *Held* (overruling the decision of the Courts below) that the suit was barred, so far as it asked to have the thakbust map amended, under cl. 6 of s. 1, Act XIV of 1859; and that a suit by a person in possession to have his title confirmed was not a suit to recover property within cl. 6 of s. 1, and was not barred by reason of its not being brought within three years from the date of the award. **MAHIMA CHANDRA CRUCKERBUTTY v. RAJ-KUMAR CRUCKERBUTTY**

[1 B. L. R., A. C., 1: 10 W. R., 22-

4. ———— *Award of Settlement officer.*—Where a claim to the proprietary rights was preferred by the plaintiffs at the time of settlement, and the Settlement officer, on the objection of the defendants, ordered the plaintiffs to be recorded as hereditary cultivators, and referred them to the Civil Court to establish their right,—*Held* that the present suit, brought to establish that right not having been instituted within three years from the date of the award of the Settlement officer, was barred by limitation. **SURDAR KHAN v. CHUNDOO** . 1 Agra, 228

5. ———— *Award of Settlement officer.*—*Held* that the plaintiffs' claim to lands awarded to defendant in settlement proceedings was not barred by the period of limitation provided in cl. 6, s. 1, Act XIV of 1859, as they were no parties to the settlement proceedings and no judicial award or order affecting them was passed by the Settlement officer. **RAMAISHEE SINGH v. SHAIYA ZALIM SINGH** [2 Agra, 8

6. ———— *Settlement award—Beng. Reg. VII of 1822.*—A Settlement officer by a certain proceeding recognized the plaintiffs' right to the property in suit, and, declaring them not to be clearly shown to be out of possession of it, ordered their names to be recorded in the proprietary register. The plaintiffs subsequently brought a suit for establishment and declaration of right to partition and possession of the property. *Held* that the proceeding of the Settlement officer was undoubtedly an award under Regulation VII of 1822, and that, as the plaintiffs sued for possession, and did not allege that they had been dispossessed since the award, thus raising the presumption that they were not in possession at the time, and as their suit was in substance and effect a suit to recover property comprised in an award, the suit was barred by limitation, not having been instituted within three years. **GUNESHEE LALL v. TEJAM KOER** 5 N. W., 78

LIMITATION ACT, 1877—*continued*

7 ————— Order of Collector with

Held that the order of the Collector was not an award of the nature contemplated by cl 6 s 1 Act XIV of 1869 **BUXSEN & RAMSOOKH 3 Agra, 384**

8 ————— Suit to set aside partition—A suit to avoid a batwara division by the Collector may be brought within six years s 1 cl 6, of Act XIV of 1869 does not apply to it **OOPOR SINGH & PALUCK SINGH 16 W R., 271**

9 ————— Suit to vary boundaries in survey award—A suit substantially to vary the boundaries laid down in a survey award must be brought within three years from the date of the award **JANEERAM MOHUT & HARADHAN BANERJEE**

[W R, 1864, 38]

10 ————— Act of 1871 art 41—Proceedings by Settlement officer to decide possession—Award—Beng Reg VII of 1822—Died in 1860 leaving him surviving his first wife G, his second wife B his mother R and M his son by a woman to whom he had been married by the gan dharpo form of marriage On D's death G's name

in possession and observing that it was not shown that possession was joint referred the case to the Settlement officer The Settlement officer without making any inquiry disposed of the case on the evidence taken by the Assistant Settlement officer and

he had obtained under the proceeding of the Settlement

LIMITATION ACT, 1877—*continued*

sch II of Act IV of 1871, or s 45 sch II of Act IV of 1877 as the proceeding of the Settlement officer was not an award under Regulation VII of 1822 **BHAONIJ MAHARAJ SINGH**

[I L R, 3 All, 738]

11 ————— Application of section—Cl 6, s 1 Act XIV of 1869 provides that possessory titles by virtue of awards under the regulations there mentioned shall become final unless questioned within three years but that will not enable a person to come in within three years after the date of such

12 ————— Settlement award—Beng Reg VII of 1822—On a Collector proceeding to

13 ————— Act XIII of 1848—Suit to contest award—Suit to assent settlement—Cause of action—The limitation declared by Act XIII of 1848 and cl 6 s 1 Act XIV of 1869 applied only

MUT SINGH & COLLECTOR OF BIKANER

[2 Agra, 258]

14 ————— Survey award Appeal from—Co sharers—A and B were similarly affected by a survey award A appealed but B did not Held in a suit by B and his co-sharers to set aside the award that B could not compute the period of limitation from the date of the order on A's appeal Held also that B's co-sharers though they did not appear in the proceedings of award were bound if they sued at all to sue within the three years prescribed by the law **TULSI RAM DAS & MOHAMED AYAZ alias MIRZA**

[I B L R, A C, 12 10 W R, 48]

15 ————— Survey award—Suit for reversal of and for possession—Where A sued for reversal of a survey award, and for recovery of possession alleging dispossession subsequent to the date of the award,—Held that his suit was not barred by reason of its being brought beyond three years from

LIMITATION ACT, 1877—continued.

regular suit in ousting the parties put in possession by the Magistrate. *Durgaram Roy v. Nursing Deb*, 2 B. L. R., A. C., 254; and *Chintamani v. Iswar Chunder*, 3 B. L. R., Ap., 122, cited. *Aukhil Chunder Chowdhry v. Delawar Hossein* [6 C. L. R., 93]

10. ———— *Order of Criminal Court as to possession—Parties bound by order—Criminal Procedure Code (1882), s. 145.*—The limitation of three years prescribed by art. 47, sch. II of the Limitation Act (1877), applies to all persons bound by, or parties to, an order under s. 145 of the Criminal Procedure Code, and to any other persons who may claim the property through any such persons under a title derived subsequent to the order. *Aukhil Chunder Chowdhry v. Mirza Delawar Chowdhry*, 6 C. L. R., 93, distinguished. *JOGENDRA KISHORE ROY CHOWDHRY v. BROJENDRA KISHORE ROY CHOWDHRY* I. L. R., 23 Cal., 731

11. ———— *Criminal Procedure Code, 1861, Ch. XXII, s. 320—Order of Criminal Court as to possession.*—A dispute having arisen between plaintiff and defendant as to the ownership of certain landed property, the Magistrate, being informed of the dispute, held an inquiry under the provisions of Ch. XXII, Act XXV of 1861, and, finding himself unable to "determine who was in actual possession of the lands," placed them in charge of the Sub-Magistrate. Held that this was not an order respecting "the possession of property," but an attachment proceeding recorded because the Magistrate was unable to determine which party was in possession. The limitation of three years prescribed by the 46th clause of sch. II of Act IX of 1871 was therefore inapplicable. *AKILANDAMMAL v. PERIASAMI PILLAI* [I. L. R., 1 Mad., 309]

12. ———— *Possession, Suit for—Order of Criminal Court for possession.*—In a dispute between A and B concerning the possession of a certain talukh, the Criminal Court made an order under s. 530 of the Code of Criminal Procedure retaining B in possession; and this order was, in a proceeding under ss. 295, 296 of the Code of Criminal Procedure, confirmed by the Court of Session. Held that a suit by A for the recovery of the land must be brought within three years from the date of the Magistrate's order, and not from the date of the order passed by the Court of Session. Art. 47 of sch. II, Act XV of 1877, refers to immoveable as well as moveable property. *KANGALI CHURN SHA v. ZOMURRUDONNISSA KHATOON* [I. L. R., 6 Cal., 709; 8 C. L. R., 154]

See *AKILANDAMMAL v. PERIASAMI PILLAI* [I. L. R., 1 Mad., 309]

13. ———— *Criminal Procedure Code (Act X of 1882), s. 146—Suit for possession of property attached by a Magistrate under s. 146.*—Art. 47 of the second schedule to Act XV of 1877 does not apply to a suit brought by one of the two claimants against the other to recover possession of property which has been attached by a Magistrate under the provision of s. 146 of the Code of Criminal Procedure.

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Chuj Mull v. Khyratee, 3 Agra, 65, and *Akilandammal v. Periasami Pillai*, I. L. R., 1 Mad., 309, referred to. *GOSWAMI RANGHOR LALJI v. GIRDHARIJI* [I. L. R., 20 All., 120]

14. ———— and art. 144—*Ejectment, Right to sue in—Order made in proceeding where a dispute exists concerning the possession of land—Criminal Procedure Code (Act X of 1872), s. 530—Criminal Procedure Code (Act X of 1882), s. 145.*—A zamindar on the 3rd May 1876 agreed to let lands on lease to A and his co-sharers, who, on the zamindar's failure to carry out the terms of the agreement, brought a suit for specific performance and obtained a decree against him in 1879. The zamindar having neglected to perform the agreement, the Court in December 1881 made an order for the execution of a pottah, and directed that the pottah should take effect from the date of the original agreement. The pottah was executed on the 19th December 1881. In 1880 A instituted a proceeding under s. 530 of the Criminal Procedure Code (X of 1872), which corresponds with s. 145 of Act X of 1882; but the application was dismissed in December 1880, A having failed to establish possession. B, having purchased the interests of two of the co-sharers, instituted a suit on the 11th May 1888 against certain persons who had been let into possession by the zamindar, the other co-sharers being added as plaintiffs. Held that art. 47, sch. II of the Limitation Act, did not apply, no right to sue in ejectment being in existence in December 1880, the right with which A was clothed under the decree not having been perfected till December 1881 when the pottah was executed. Held further that the suit was not barred under art. 144, as limitation did not commence to run until the pottah had actually been executed. Art. 47 of the Limitation Act contemplates a right to sue in ejectment being in existence at the time of the passing of an order under s. 145 of the Code of Criminal Procedure. *BOLAI CHAND GHOSAL v. SAMIRUDDIN MANDAL* I. L. R., 19 Cal., 646

15. ———— *Khoti Act (Bom. Act I of 1880), ss. 20, 21, 22—Decision of Survey officer as to nature of tenure—Date of framing botkhat.*—The plaintiffs were khots and defendants were their yearly tenants in occupation of their khoti khasgi lands. In 1890 the Survey officer, purporting to act under s. 20 of the Bombay Khoti Act (Bombay Act I of 1880), decided that defendants were occupancy tenants, but the plaintiffs did not come to know of this decision till 1893, when the botkhat was prepared and signed. Shortly afterwards the plaintiffs took forcible possession of the lands. Thereupon the defendants filed a suit in the Mamlatdar's Court to recover possession, alleging that they were owners of the land, and that they had been illegally dispossessed. The Mamlatdar restored them to possession. In 1896 plaintiffs filed the present suit to eject defendants. Defendants pleaded (*inter alia*) that the suit was bad for want of notice to quit, and that the claim was time-barred. Held that the suit was within time, the cause of action having accrued in 1893, when the botkhat was prepared, and not in 1890, when the Survey officer passed his decision. *MAHPAT RANE v. LAKSHMAN* [I. L. R., 24 Bom., 428]

LIMITATION ACT, 1877—continued

art. 47 (1871, art 46, 1859, s 1, cl 7)

1. ———— *Suit for property respecting which no final award is made*—A suit to recover property respecting which no final award has been passed under Act IV of 1840 was not barred by limitation, under cl 7, s 1, Act XIV of 1859 but might be brought within twelve years from the date of ouster *DYAN SANOOR v SOGHAN 3 W R, 174*

2. ———— *Verbal order of Magistrate under Act IV of 1840*—Held that a verbal order of the Magistrate under Act IV of 1840 cannot be regarded as an order or award within the meaning of the term of cl 7 Act XIV of 1859 *GUNGA PRESHAN v MAHOMED KOOLOOH ALUM 2 Agra, 27*

3. ———— *Order in suit under Act IV of 1840—Benamidar*—N in 1852 purchased from A a patni talukh in the name of H. In 1854 N died, leaving two sons one of whom was A, and a widow. The sons allowed the widow to remain in possession. In December 1854 R made a complaint before the Magistrate under Act IV of 1840 against H & others stating that they had dispossessed him of the talukh on 27th December and the Magistrate thereupon ordered H and the other defendants except K to put R in possession. On 12th January 1855 R obtained possession and sold the property. On 28th December 1866 A and his brother sued H & the purchaser to recover possession. Held (reversing the decision of the Courts below) that the suit was not barred by s 1 cl 7 of Act XIV of 1859. The mere fact that the Act IV award was passed against H a benamidar of the plaintiffs was not sufficient to show that they were bound by that award unless evidence was given that they gave authority to H express or implied to act in the matter on their behalf. *KHAGAY DRONATH MALIK v RAKHAL DAS SIKAR 2 B L R 8 N, 1*

4. ———— *Order of Magistrate for attachment*—Where a Magistrate passed an order for attachment on the finding that neither of the parties then at issue was in possession—Held that it was not an order respecting possession within the meaning of cl 7 s 1 Act XIV of 1859 and therefore the limitation provided by that clause was not applicable. *CHUD MULL v KHARATEE 3 Agra, 65*

5. ———— *Order to record letter settling proceedings*—Where the result of certain proceedings under Act IV of 1840 was a letter from the Judge directing the Magistrate to leave certain maliks not in possession of a certain dachrah in dispute to their civil remedy and the Magistrate ordered the Judge's letter to be put with the record—Held that such order was not an order in the sense

LIMITATION ACT, 1877—continued

of Act XIV of 1859, s 1 cl 7 *MOSABER ALI v NUND KISHORE 20 W. R., 318*

7. ———— *Act XIV of 1859 s 1 cl 7—Order as to possession under Criminal Procedure Code 1861 s 318*—It was held under s 1 cl 7, of the Act of 1859 that that clause did not apply to an order as to possession under the Criminal Procedure Code s 318. *DOORJEN SINGH v SHIBRA 3 N W, 171*

GOBIND CHUNDER SHANA v ASHBOF ALI MEAH GREGORY v GOVINDOOR SHANA 8 W R, 490

UNDOOR NABAIN v CHUTTURDHARE SINGH 19 W R, 480

6. ———— *Order under Criminal Procedure Code 1861 s 319—Order of attachment*—The plaintiff sued for the establishment of his proprietary right to and possession of a certain ghāt or bathing place. The lower Courts held that the suit was barred by limitation under cl 46 sch II Act IX of 1871 the suit not having been brought within three years from the date on which the Magistrate acting under Ch XVIII of

opinion that the latter portion of the order amounted to an attachment of the property in dispute under s 319 of Act XIV of 1861. It was held that the order to the tehsildar was not an attachment contemplated by that section. *DURGAL MANGAL 17 N W, 35*

9. ———— *Suit for possession of char lands reformed after diluvion—Order for possession in Criminal Court*—Certain char lands which

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regular suit in ousting the parties put in possession by the Magistrate. *Durgaram Roy v. Nursing Deb*, 2 B. L. R., A. C., 254; and *Chintamani v. Iswar Chunder*, 3 B. L. R., Ap., 122, cited. *Aukhil Chunder Chowdhry v. Delawar Hossain*

[6 C. L. R., 93]

10. ———— *Order of Criminal Court as to possession—Parties bound by order—Criminal Procedure Code (1882), s. 145.*—The limitation of three years prescribed by art. 47, sch. II of the Limitation Act (1877), applies to all persons bound by, or parties to, an order under s. 145 of the Criminal Procedure Code, and to any other persons who may claim the property through any such persons under a title derived subsequent to the order. *Aukhil Chunder Chowdhry v. Mirza Delawar Chowdhry*, 6 C. L. R., 93, distinguished. *Jogendra Kishore Roy Chowdhry v. Brojendra Kishore Roy Chowdhry* . I. L. R., 23 Cal., 731

11. ———— *Criminal Procedure Code, 1861, Ch. XXII, s. 320—Order of Criminal Court as to possession.*—A dispute having arisen between plaintiff and defendant as to the ownership of certain landed property, the Magistrate, being informed of the dispute, held an inquiry under the provisions of Ch. XXII, Act XXV of 1861, and, finding himself unable to “determine who was in actual possession of the lands,” placed them in charge of the Sub-Magistrate. Held that this was not an order respecting “the possession of property,” but an attachment proceeding recorded because the Magistrate was unable to determine which party was in possession. The limitation of three years prescribed by the 46th clause of sch. II of Act IX of 1871 was therefore inapplicable. *Akilandammal v. Periasami Pillai* [I. L. R., 1 Mad., 309]

12. ———— *Possession, Suit for—Order of Criminal Court for possession.*—In a dispute between A and B concerning the possession of a certain talukh, the Criminal Court made an order under s. 530 of the Code of Criminal Procedure retaining B in possession; and this order was, in a proceeding under ss. 295, 296 of the Code of Criminal Procedure, confirmed by the Court of Session. Held that a suit by A for the recovery of the land must be brought within three years from the date of the Magistrate's order, and not from the date of the order passed by the Court of Session. Art. 47 of sch. II, Act XV of 1877, refers to immovable as well as moveable property. *Kangali Churn Sha v. Zomureudonissa Khaton*

[I. L. R., 6 Cal., 709; 8 C. L. R., 154]

See *Akilandammal v. Periasami Pillai*

[I. L. R., 1 Mad., 309]

13. ———— *Criminal Procedure Code (Act X of 1882), s. 146—Suit for possession of property attached by a Magistrate under s. 146.*—Art. 47 of the second schedule to Act XV of 1877 does not apply to a suit brought by one of the two claimants against the other to recover possession of property which has been attached by a Magistrate under the provision of s. 146 of the Code of Criminal Procedure.

LIMITATION ACT, 1877—continued.

Chuj Mull v. Khyratee, 3 Agra, 65, and *Akilandammal v. Periasami Pillai*, I. L. R., 1 Mad., 309, referred to. *Goswami Ranohor Lalji v. Giridhariji* [I. L. R., 20 All., 120]

14. ———— and art. 144—*Ejectment, Right to sue in—Order made in proceeding where a dispute exists concerning the possession of land—Criminal Procedure Code (Act X of 1872), s. 530—Criminal Procedure Code (Act X of 1882), s. 145.*—A zamindar on the 3rd May 1876 agreed to let lands on lease to A and his co-sharers, who, on the zamindar's failure to carry out the terms of the agreement, brought a suit for specific performance and obtained a decree against him in 1879. The zamindar having neglected to perform the agreement, the Court in December 1881 made an order for the execution of a pottah, and directed that the pottah should take effect from the date of the original agreement. The pottah was executed on the 19th December 1881. In 1880 A instituted a proceeding under s. 530 of the Criminal Procedure Code (X of 1872), which corresponds with s. 145 of Act X of 1882; but the application was dismissed in December 1880, A having failed to establish possession. B, having purchased the interests of two of the co-sharers, instituted a suit on the 11th May 1888 against certain persons who had been let into possession by the zamindar, the other co-sharers being added as plaintiffs. Held that art. 47, sch. II of the Limitation Act, did not apply, no right to sue in ejectment being in existence in December 1880, the right with which A was clothed under the decree not having been perfected till December 1881 when the pottah was executed. Held further that the suit was not barred under art. 144, as limitation did not commence to run until the pottah had actually been executed. Art. 47 of the Limitation Act contemplates a right to sue in ejectment being in existence at the time of the passing of an order under s. 145 of the Code of Criminal Procedure. *Bolai Chand Ghosal v. Samiruddin Mandal* . I. L. R., 19 Cal., 646

15. ———— *Khoti Act (Bom. Act I of 1880), ss. 20, 21, 22—Decision of Survey officer as to nature of tenure—Date of framing botkhat.*—The plaintiffs were khots and defendants were their yearly tenants in occupation of their khoti khasgi lands. In 1890 the Survey officer, purporting to act under s. 20 of the Bombay Khoti Act (Bombay Act I of 1880), decided that defendants were occupancy tenants, but the plaintiffs did not come to know of this decision till 1893, when the botkhat was prepared and signed. Shortly afterwards the plaintiffs took forcible possession of the lands. Thereupon the defendants filed a suit in the Mamlatdar's Court to recover possession, alleging that they were owners of the land, and that they had been illegally dispossessed. The Mamlatdar restored them to possession. In 1896 plaintiffs filed the present suit to eject defendants. Defendants pleaded (*inter alia*) that the suit was bad for want of notice to quit, and that the claim was time-barred. Held that the suit was within time, the cause of action having accrued in 1893, when the botkhat was prepared, and not in 1890, when the Survey officer passed his decision. *Mahtapat Rani v. Lakshman* [I. L. R., 24 Bom., 426]

LIMITATION ACT, 1877—continued.

16. ———— Limitation Act (XIV) of 1859—Order of Mamlatdar's Court as to

suit for the partition of property commenced under the
Mamlatdar's order is not a suit to recover such pro-

RAKHMA . . . I. L. R., 10 BOM., 208

17. ———— Order of Mamlatdar under
Bom Act V of 1864—Act XVI of 1838—An order
of the Court of the Mamlatdar under the last clause

LIMITATION ACT, 1877—continued.

BABAJI v ANNA. 10 Bom., 410

18. ———— Order of Mamlatdar under
Bom. Act V of 1864—A brought a suit in a Mamlat-
dar's Court, under Bombay Act V of 1864, to recover
possession of certain land from B. C joined in the

pleaded limitation under s. 1, cl. i, Act XIV of
1859, as the action was not filed within three years of
the Mamlatdar's order. Held that the action was not
barred by limitation, as C was not properly a defendant
in the Mamlatdar's Court, and that therefore the
Mamlatdar had no power to make an order regarding
him. VISHVANATHRAY KACHESTAR v NARAYAN BIN
GOPAL KHAPE 9 Bom., 424

19. ———— Right of possession
of land—Mortgage by

(Bom Act V of 1864, s. 10, and Act CX

proceedings in the Mamlatdar's Court as to the
the mortgagor. But held that, when the plaintiff,
having previously taken an assignment of P's mort-
gage, purchased the equity of redemption from R, the
mortgage was extinguished, there being no circum-

LIMITATION ACT, 1877—continued.

therefore incumbent upon *R* to bring a suit within three years from the Mamlatdar's order, as provided by art. 46, sch. II of the Limitation Act (IX of 1871), and that not having been done, the plaintiff, who derived his title from *R*, could not recover possession from the defendant. *BAPU BIN MAHADAJI v. MAHADAJI VASUDEO*. I. L. R., 18 Bom., 348

20. ——— *Finding by Mamlatdar as to possession—Subsequent contrary finding by Civil Court—Effect of Mamlatdar's order—Limitation Act, s. 28—Suit by party against whom Mamlatdar's order was made.*—The plaintiff brought this suit to recover possession of certain land which had belonged to her nephew, and of which, after his death in 1878, she had assumed the management. In 1881, she brought a possessory suit against the first defendant in the Mamlatdar's Court, which suit was dismissed in January 1885, the Mamlatdar holding that she had not been in possession. In a civil suit, however, which (pending the proceedings in the Mamlatdar's Court) she had filed against the first defendant in the Court of the Subordinate Judge of Haveri, the Judge found that she had been in possession since 1880, and awarded her damages against the first defendant (who was held to be her farm servant) for crops which had been taken away by him. In 1887, the second defendant as mortgagee from defendant No. 1 obtained a decree against plaintiff in the Mamlatdar's Court awarding him possession of the land, and in execution of that decree the plaintiff was dispossessed in December 1887. In 1890, the plaintiff filed this suit to recover possession and for mesne profits since 1887. The defendant pleaded that the plaintiff had no title to the land, and that the suit was barred by limitation, inasmuch as the plaintiff had not brought a suit to establish her right within three years after the Mamlatdar's order in 1885 dismissing her possessory suit. *Held* that the Mamlatdar's order of January 1885 had no conclusive effect, and was rendered ineffectual by the subsequent decree of the Civil Court; and as the plaintiff continued in possession, notwithstanding that order, down to 1887, the present suit was not barred by limitation, and neither her remedy nor her right to the land was extinguished. *KRISHNACHARYA v. LINGAWA*

[I. L. R., 20 Bom., 270]

21. ——— *Non-payment of purchase-money—Suit for possession by vendee who has not paid the purchase-money—Remedy of vendor—Limitation—Limitation Act (XV of 1877), sch. II, art. 47—Vendor and purchaser.*—The plaintiffs owned certain land on which the defendant, with the plaintiffs' leave, built a house. Disputes arose between plaintiffs and defendant, and in February 1893, the defendant obtained an order from the Mamlatdar in a possessory suit against the plaintiffs directing the plaintiffs to give up possession of the property to him. In August 1893, an agreement was made between them, in pursuance of which the defendant executed a rent-note to the plaintiffs promising to give up the property to the plaintiffs at the end of four months on payment by the plaintiffs of Rs. 100. On the 25th November 1896, the plaintiffs brought his suit for possession, alleging that the defendant

LIMITATION ACT, 1877—continued.

refused to give up the property. The District Judge dismissed the suit, as barred by limitation, under art. 47, sch. II of the Limitation Act, not having been brought within three years from the date of the Mamlatdar's order of 28th February 1893. *Held* also that the contract between the parties dissolved the order of the Mamlatdar in the possessory suit and rendered unnecessary for the plaintiffs to sue to set it aside. The present suit, which was based on the contract sale, was therefore not barred by art. 47 of the Limitation Act. *SAGAJI v. NAMDEV*

[I. L. R., 23 Bom., 5]

22. ——— *Partition suit—Bom. A. C. 17 of 1864.*—Art. 46 of sch. II of the Limitation Act (IX of 1871) is not applicable to a partition suit. *SHIVRAM v. NARAYAN*. I. L. R., 5 Bom.,

23. ——— *Partition suit—Bom. A. C. 17 of 1864.*—Plaintiff in 1876 filed a suit to establish his right to, and to recover a fourth share of certain property which he alleged to be ancestral. He stated his cause of action to have accrued on the 17th May 1871, on which day he had been dispossessed of an order of the Mamlatdar, made under Bombay Act of 1864. The District Court held that the suit was barred by art. 46, sch. II of the Limitation Act (IX of 1871). *Held* by the High Court, on special appeal, that art. 46 did not apply, and that the suit was not barred. *BHAGUJI v. ANJABA*

[I. L. R., 5 Bom., 2]

——— art. 48 (1871, art. 48).

1. ——— and art. 36—*Standing crops—Immoveable property.*—Standing crops are immovable property within the meaning of the Limitation Act. *PANDAH GAZI v. JENNUDDI*

[I. L. R., 4 Calc., 665; 2 C. L. R., 52]

2. ——— *Suit for damages for injury to crops.*—Under Act XIV of 1859, it was held that a suit for damages for injury to standing crops was a suit for damages for injury to personal property within the meaning of s. 1, cl. 2. *KASHIDAS G. VINDBHAI v. B. B. AND C. I. RAILWAY COMPANY*

[6 Bom., A. C., 11]

Where the crops were cut and stored, they were personal property. *MUNNOO BEBEE v. JHANDA KHAN*

3 Agra, 38

3. ——— *Suit for compensation for injury to land and crops.*—A suit for compensation for injury to land resulting in the loss of crops which the land might have produced, but for the illegal act of the defendant, is not a suit with respect to personal property. *RAJ CHUNDER GHOSE v. JOY KISHU MOOKERJEE*

4 W. R., 7

4. ——— *Suit to recover money deposited for a certain purpose.*—*R* sued *M* for a certain sum of money on the ground that he had given such sum to *M* to deliver to his (*R*'s) family, that *M* had not delivered the money; and that, when this fact became known to *R* and he demanded the money, *M* denied having received the same. *Held* that the limitation law applicable to the suit was that provided by No. 48, sch. II of the Limitation Act 1877, and the time from which the period of limitation

LIMITATION ACT, 1877—continued

of certain land and obtained a decree In 1874 B

LIMITATION ACT, 1877—continued

MARAJI v ANNA

10 Bom 419

Mamlatdar had no power to make an order regarding
him, VISHVANATHAY KACHESTAR v NABATAN BIN
GOPAL KHAPE 8 Bom, 424

19 ———— Right of possession
claimed by tenant against landlord—Mortgage by
landlord—Possessory suit in the Mamlatdar's Court
by the tenant against the mortgagor—Decree in
favour of the tenant—Assignment of mortgage by
mortgagee—Purchase of the equity of redemption by
the assignee—Merger—Suit brought by the assignee
to recover possession—Assignee bound by Mamlat-
dar's order against mortgagor—Mamlatdars Act
(Bom Act 7 of 1861) s 15—Mamlatdars Act

Mamlatdar's order is not a suit to recover such pro-
perty and therefore does not fall within cl 7 of s 1
of Act XIV of 1859 and whether that property is the
only one of which a partition is claimed or whether it
is one of several such properties is not material In
the Presidency of Bombay it is only in those cases in
which the possession of property has been of such a

17 ———— Order of Mamlatdar under
Bom Act 7 of 1861—Act XVI of 1838—An order
of the Court of the Mamlatdar under the last clause

LIMITATION ACT, 1877—continued.

8. ———— and art. 36—*Suit for damages for wrongful conversion—Injury to moveable property.*—Plaintiff was the owner of a house mortgaged to defendant. On the 22nd August 1885 defendants sold the house by auction under a power of sale contained in the mortgage and gave possession to the purchaser. On the 2nd September 1887, plaintiff sued the defendants to recover the value of certain timber which was stored in the house and not mortgaged, and which plaintiff alleged the defendants had taken possession of and converted to their own use. It was proved that the timber was in the house when defendants took possession from the plaintiff and defendants did not account for it. *Held* (1) that plaintiff was entitled to recover from the defendants the value of the timber; and (2) that the suit was not barred, art. 49 and not art. 36 of sch. II of Limitation Act being applicable to it. *PASSANHA v. MADRAS DEPOSIT AND BENEFIT SOCIETY* [I. L. R., 11 Mad., 393]

9. ———— and art. 116—*Suit to recover title-deeds left with a mortgagee after redemption—Demand and refusal—Cause of action.*—After the redemption of a mortgage, the title-deeds of the mortgage premises were left with the mortgagee, who refused to return them on demand made by the mortgagor. The mortgagor now sued to recover possession of them. *Held* the Limitation Act, sch. II, art. 49, was applicable to the case, and that time began to run from the date of the mortgagee's refusal. *SUBBAKKA v. MARUPPAKKALA*

[I. L. R., 15 Mad., 157]

10. ———— *Suit for damages for cutting and carrying away crops—Act XIV of 1877, sch. II, arts. 36, 39, 48, and 109.*—In a suit for damages for cutting and carrying away crops, *Held* by the Full Bench (RAMPINI, J., dissenting) such suit does not come within the terms of art. 36 of sch. II of the Limitation Act (XIV of 1877). *Per MACLEAN C.J.* (TRIVELLYAN, J., concurring).—Assuming that the case does not come within the terms of art. 39, the case is governed by art. 49. The crops, though immovable in the first place, become specific moveable property when severed, and the fact that the severance was a wrongful act does not make any difference. *Per MACPHERSON, J.*—The case is governed by art. 49 or 48, as the crops, after they had been cut, come under the description of specific moveable property. Possibly also the case might be brought under art. 109, if it is not brought under art. 39. *Per GROSE, J.*—Art. 49 applied to this case. *Surat Lal Mondal v. Umir Haji*, I. L. R., 22 Cal., 877, followed. *Per RAMPINI, J.* (dissentiente).—The suit as framed not being one for compensation for trespass, art. 39 does not apply. Art. 48 or 49 also does not apply, as they deal with property which is *ab initio* moveable, and cannot be held applicable unless the first wrongful act, *viz.*, the conversion of the immovable into moveable property, be disregarded. Art. 109 also does not apply, as it referred to a case in which possession of immovable property was withheld. Art. 36 therefore applied to the case. *Essoo Bhayaji v. Steamship "Savitri,"* I. L. R., 11 Bom., 133, referred to.

LIMITATION ACT, 1877—continued.

Pandah Gazi v. Jennudi, I. L. R., 4 Cal., 665, dissented from by TRIVELLYAN, J. *MANOON JHA v. DOLHIN GOLAB KOER*. I. L. R., 25 Cal., 692 [2 C. W. N., 265]

11. ———— *Claim to recover goods in hands of third parties—Alternative claim for value as compensation.*—In execution of a decree obtained by the defendants against one M in the Court of Small Causes, certain goods were attached to which plaintiff preferred a claim. That claim being disallowed, plaintiff filed in the City Civil Court, Madras, a suit for, and obtained a declaration of, his title to the goods, but prior to the date of the decree, namely, in October 1895, the goods attached had been sold by the Court of Small Causes, and certain third parties had become purchasers thereof. On plaintiff, in December 1897, suing "for the recovery of the goods or their value as compensation,"—*Held* that the suit, being framed for the recovery of specific moveable property, was governed by art. 49 of sch. II of the Limitation Act, 1877, and was therefore not barred by limitation. The alternative prayer for the value of the goods as compensation must be read as ancillary to the main relief asked for with reference to s. 203 of the Code of Civil Procedure, and did not alter the character of the suit or bring it within any other category of the schedule. *MURUGESA MUDALI v. JOTHARAM DAVAY* [I. L. R., 22 Mad., 478]

——— art. 51 (1871, art. 50).

The suits referred to in this article were formerly governed by cl. 9 of s. 1 of the Act of 1859: and this article seems to be founded on the cases decided on that clause.

See BOLDONATH SHAH v. LAHENISSA BIBEE [7 W. R., 164]

TRIPP v. KUTBEER MUNDUL. 9 W. R., 209

——— art. 52 (1871, art. 51).

1. ———— *Act XIV of 1859, s. 1, cl. 8—Goods sold by wholesale and retail.*—Under Act XIV of 1859, there was a distinction between goods sold by retail and those sold by wholesale, the former being specially mentioned in cl. 8 of s. 1, and it was a question under that Act whether three years or six years' limitation applied to a sale of goods wholesale; three years being finally held to be the proper period. *LAL MOHUN HOLDAR v. MAHADEB KATEE*

[B. L. R., Sup. Vol., 909
9 W. R., 193]

CHUNDEE CHURN PAUL v. RAMNARAIN SEN

[Cor., 8]

2. ———— *Act XIV of 1859, s. 1, cl. 8—Articles sold by retail.*—Goods supplied to a dealer for the purpose of retail sale by him were held to be not "articles sold by retail" within the meaning of cl. 8, s. 1, Act XIV of 1859. *MOTHOORA LALL PAUL v. CHRINEBASH DUTT*

[3 W. R., S. C. C. Ref., 24]

GOPAL CHUNDEE SHAHA v. SINARS. 8 W. R., 4

Cases of articles sold by retail are—

BULDEO DOSS JOHURRY v. SREENAATH SEIN

[1 Ind. Jur., O. S., 114]

LIMITATION ACT, 1877—continued

began to run was when *B* first learnt that *M* had retained the money in his possession instead of paying it as directed. **RAMESHAR CHAUDHRY v. MATA BHIRU**
[I. L. R., 5 All., 341]

art. 49 (1871, art. 49).

perty" in s. 1, cl. 2. **AMBITHAMAL v. RANGANADHA PILLAI**
3 Mad., 165

ANONYMOUS CASE. . . **W. R., F. B., 126**

AHMEDULLAH v. HUR CHURN PANDAH
[2 W. R., 235]

RAMNATH ROY CHOWDEY v. HURRI CHUNDER ROY CHOWDEY
5 W. R., 50

PRANLAD MAHARUDRA v. WATT 10 Bom., 346
and **DHURPUTY KOER v. LLOYD** 17 W. R., 277

S. 1, cl. 2, has been amended by the amendment of 1877.

2. ———— *Suit to recover ornaments taken with view of borrowing money on them*—
In a suit to recover certain ornaments (or their value) which had been obtained by the defendant from the plaintiff's ancestor with a view to borrowing money on them the cause of action was held to arise when the defendant set up an adverse title to them. **SHUMBOO CHUNDER MULLICK v. FRANKISTO MULLICK**
[14 W. R., 323]

3. ———— *Sale of moveable and immoveable property—Refusal to execute conveyance—Suit for possession—Unlawful possession*—*A* entered into an agreement with *B* for the purchase of moveable and immoveable property and paid a

made the conveyance to *C*, and ordering *B* specifically to perform his contract and execute a conveyance of the property to himself, *A*. This decree was confirmed on appeal *B* refusing to execute the conveyance to *A*, the conveyance was executed by the Court under the provisions of s. 202 of Act VIII of 1859 *C* still detaining possession of the moveable and immoveable property in question *A* brought this suit against him to recover possession of the

LIMITATION ACT, 1877—continued

KRISHNAJI PATEL v. RAMCHANDRA BHAGVAT
[I. L. R., 5 Bom., 554]

4. ———— *Suit for specific moveable*

possession of the property bequeathed *A* appealed and the case was remanded for re-trial. On the 27th of March 1873 the former order was cancelled and a certificate was granted to *A*. On the 19th of August 1873 *B* was directed to deliver up the property to *C*, who had purchased it from *A*. On the 22nd of March 1878 *C* instituted a suit to recover the property. *Held* that the suit was barred under art. 49 of the Limitation Act. Art. 123 of the Limitation Act only applies to cases in which the property sought to be recovered is not only a legacy but is also sought to be recovered as such from a person who is bound by law to pay such legacy, either because he is the executor of the will or otherwise represents the estate of the testator. **ISSUR CHUNDER DOSS v. JUGGUT CHUNDER SHANA**
[I. L. R., 9 Cal., 79]

5. ———— *Cause of action—Suit by Mahomedan lady to recover property from husband after divorce*—In a suit by a Mahomedan lady against her husband after divorce for recovery of property belonging to her which her husband held before divorce, the cause of action to the wife arose at the time of the separation. **ABDOOL ALI alias SHOAGERA v. KURNUMISSA** 9 W. R., 153

6. ———— *Suit for compensation for attachment before judgment—Limitation Act sch. II, art. 86—Suit for damages*—In a suit by *A* against *B*, the property of *B* was attached before judgment in November 1888. The suit was dismissed in October 1889 and an appeal by the plaintiff was dismissed in July 1890. *B* now sued *A* in September 1892 for damages occasioned by the attachment before judgment. *Held* that art. 49

VIKRAMAN v. AVISILAN KOYA
[I. L. R., 19 Mad., 80]

7. ———— *Suit for damage to property*

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LIMITATION ACT, 1877—continued.

in the name of her son, the plaintiff. A further sum was similarly paid over by her in December 1871, and at her request was credited to the same account. The plaintiff alleged, and the Court found, that these sums were presents which had been made to him on his birthday and other auspicious occasions. The said sums had been carried over from year to year in the firm's books, the interest being added each year, but no payment had ever been made to the plaintiff, or on his behalf, out of the sum so standing to his credit. Compound interest had been allowed in the account, and, on the 9th November 1893, the amount standing to the credit of the plaintiff was Rs. 4,917. The plaintiff contended that the money had been paid to, and accepted by, the defendant as a deposit to be held in trust for him. The defendant alleged that the money in question had been lent to him by the plaintiff's mother, and contended that the plaintiff's claim was barred by limitation. *Held* that the plaintiff's claim was not barred. The defendant stood in a fiduciary position to the plaintiff, and therefore there was a deposit within the meaning of art. 60 of the Limitation Act (XV of 1877), and limitation did not commence to run until demand. **DORABJI JEHangIR RANDIVA v. MUNCHERJI BOMANJI PANTHAKI**

[I. L. R., 19 Bom., 352]

Held in the same case on appeal, affirming the decision of the Court below, that the defendant had held the money not as a loan, but as a deposit; that art. 60 of the sch. II of the Limitation Act (XV of 1877) applied; and that the plaintiff's claim was not barred. **MUNCHERJI BOMANJI PANTHAKI v. DORABJI JEHangIR RANDIVA**

[I. L. R., 19 Bom., 775]

art. 61 (1871, art. 59).

1. ——— *Money paid at defendant's request—Hindu family—Debts of manager.*—In the year 1867 the plaintiff, who was then living jointly with the defendant, who was his brother, executed a bond to secure the repayment of moneys advanced to him, which moneys were applied by him for the joint benefit of himself and the defendant. In the year 1868 the plaintiff executed another bond for the same purpose. In 1870 the plaintiff and defendant separated, and the lender thereupon sued the plaintiff upon the bond executed in 1867, and obtained a decree. In 1874 the plaintiff executed a fresh bond in favour of the decree-holder, in order to avoid execution of the decree and to retire the bond of 1868. In 1877 (within three years from the date of the fresh bond), the plaintiff sued his brother to recover a moiety of the sum secured thereby. *Held* that the date upon which money was paid by the plaintiff for the defendant must have been before 1870, and that therefore the suit was barred by limitation under Act IX of 1871, sch. II, art. 59. **Ramkrishna Roy v. Muddun Gopal Roy**, 12 W. R., 194, followed. **SUNKUR PERSHAD v. GOURY PERSHAD**

[I. L. R., 5 Calc., 321]

2. ——— *Suit to recover balance of payments made on behalf of defendant—Appropriation of payments.*—In a suit to recover a balance

LIMITATION ACT, 1877—continued.

with reference to payments made by plaintiff on account of defendant, where no mutual account or reciprocal demands existed,—*Held* that plaintiff could not recover any items due more than three years prior to the date on which the suit was instituted, but that he was entitled to apply all payments, even those subsequently made, in reduction of so much of his claim as was barred. **THAKOOR PERSHAD SINGH v. MOHESH LALL**

24 W. R., 380

3. ——— *Suit for money payable to the plaintiff for money paid for the defendant—Suit for account—Limitation Act, sch. II, art. 120.*—Under an award two persons were made liable each for the payment of a moiety of the expenses of certain temples which were held jointly. One of the persons so made liable, alleging that he had paid more than his share of the expenses, sued the other for the balance in excess of the moiety which he was bound to pay under the award. *Held* that the suit was governed by art. 61 of the second schedule to the Indian Limitation Act, 1877, and that, although the taking of accounts might be necessary, the suit was not a suit for an account to which art. 120 of the same schedule might apply. **Rohan v. Jwala Prasad**, I. L. R., 16 All., 333, referred to. **RAMAN LALJI MAHARAJ v. GOPAL LALJI MAHARAJ**

[I. L. R., 19 All., 244]

art. 62 (1871, art. 60).

Cases now provided for by this article were formerly held to be governed by the general period of limitation for suits not otherwise provided for, which period was six years under cl. 16 of s. 1 of the Act of 1859.

It was so held in the case of a servant to whom money had been entrusted for a particular purpose, and who did not make the payment he was directed to make. **AMJUD ALI v. ALI BUKSH** 2 W. R., 122

AHMEDDOOLAH v. HUR CHURN PANDAH

[2 W. R., 235]

1. ——— *Suit for recovery of salary—Money had and received.*—The defendant, who was a batwara ameen employed by the Collector, drew from the public treasury at Backergunge a sum of money to pay the establishment, but failed to pay the plaintiff who was a mohurir under him. In a suit against the ameen for recovery of his salary after a lapse of three years from the time when the salary became due,—*Held* that the plaintiff's claim was for money had and received on his account, and therefore he might bring his suit within six years from the date of such receipt. **ABHAYA CHAMAN DUTT v. HARO CHANDRA DAS BANIK** 4 B. L. R., Ap., 68

S. C. OBHOY CHURN DUTT v. HURO CHUNDER DOSS BUXEE

13 W. R., 150

2. ——— *Suit for share of money had and received.*—A, B, and C being joint creditors of D, A and B received in 1856 a payment on account in respect of their share in the debt. D having made default in payment of the balance, separate suits were brought against him by A, B, and C. The Court having held that the payment was a payment to all, A and B recovered more than

LIMITATION ACT, 1877—contd. next

SHAMA CHURN LALL v COLLECTOR OF TIRHOOT
[1 W R. 308]

BUCHA GORE v COLLECTOR OF TIRHOOT
[7 W R., 102]

There is no distinction made in the present Act between sales by wholesale and sales by retail

3 ——— Goods supplied on credit

Limitation must be taken to be on the date when each item claimed was supplied SATOWREE SINGH v KRISTO BANGAL 11 W R 529

4 ——— Suit on contract for the supply of pictures at various times subject to ap

art. 53 (1871, art. 52)

This article follows the case of SATOWREE SINGH v KRISTO BANGAL 11 W R, 529

and art. 52—Suit for price of

LIMITATION ACT 1877—continues

payable in advance the cause of action accrues from the time when the labour was performed PERLADH SEN v RUMJEE POK W R 1864 68

2 ——— Suit to recover sums expended by zamindar for irrigation In a suit to recover sums expended by the zamindar at the defence

more than three years before the suit Held that the suit being for work and labour done at their request was not barred by limitation under art. 56 of the Limitation Act which applied to the suit SUNDARAM v SANKARA I L R, 9 Mad 334

1 ——— art. 57—Suit for money lent—Limitation for a suit to recover debt personally from the mortgagor where mortgage deed contains no personal undertaking for repayment—By a

profits pay the assessment for it and restore it to the defendant on repayment of the debt But no personal undertaking to pay was given by the defendant The land was sold by the revenue authorities for arrears of assessment due from the defendant for certain other lands of the defendant The plaintiff now sought to recover the debt personally from the defendant The Court of first instance dismissed the plaintiff's claim on the ground that the failure on the part of the plaintiff to pay the arrears of assessment disentitled him to recover

charge due to him and no personal undertaking by the defendant (mortgagor) to pay the loan SAWABA KHANDAPA v ABANJI JOTIRAY

[I L R 11 Bom 475]

2 ——— and art. 120—Suit on pledge of moveable property—Prayer in plaint both for personal decree and for right to enforce charge against property pledged—A suit on a pledge of certain moveable property made in respect of a

the prayer for a personal decree was concerned the

with art. 120 of the same schedule and was therefore not barred NIK CHAND BABOO v JAGABUNDU GHOSH I L R 22 Calc. 21

(I L R 1 All 384)

art. 56 (1871 art. 55)

1 ——— Suit for work and labour done—Cause of action—Where no law special custom or agreement is shown making the remuneration on a joint contract for labour to be done

LIMITATION ACT, 1877—continued.

had been settled and executed for the sale of the property. *B* in defence alleged that, although certain terms and conditions as to the sale had been definitely settled for embodiment in a formal sale-deed, it was only subject to these terms and conditions that he had been prepared to complete the transaction, and that, as they had been omitted from the document executed by *D* on the 1st September 1879, he had never accepted that document. In March 1884, the High Court on appeal dismissed the suit, holding that the parties had never been *ad idem* with reference to the contract alleged by *D*, and that the document of the 1st September 1879 had never been finally accepted so as to be binding and enforceable by law. In September 1884, *B* sued *D* for recovery of the sum of Rs33,000 with interest. He contended that, under the terms of the arrangement made on the 1st September 1879, the debt of Rs33,000 then owing to him changed its character; that it was no longer merely the old balance due by the defendant, but having been credited in the latter's books, should be treated as a payment by him (the plaintiff) as a deposit on account of the sale; that the suit was therefore one for money had and received by the defendant to the use of the plaintiff; and that the cause of action did not arise until the contract failed, by reason of the decree of the High Court on 14th March 1884, dismissing the suit for specific performance. *Held* that this contention must fail, and the debt must be treated as the old balance due by the defendant to the plaintiff, inasmuch as by the terms of the agreement itself which the plaintiff set up, no deposit was payable, and the price was not to be paid till the completion of the contract, and inasmuch as the plaintiff, in demanding payment, after the negotiations had failed, demanded it simply as for the balance of the old debt, and not as for the return of a deposit. *Held*, further, that the 1st September 1879, upon which the contract set up by the plaintiff was alleged to have been completed, was the latest possible date upon which the debt could be said to have become due, and that, inasmuch as the present suit was not brought until the 8th September 1884, it was barred by limitation. **DHUM SINGH v. GANGA RAM I. L. R., 8 All., 214**

10. ———— *Money paid—Money had and received—Goods paid for before delivery—Short delivery—Failure of consideration.*—Money paid as the price of goods to be delivered hereafter is money received for the use of the seller, and it is only upon failure of consideration that the money so paid becomes money received for the use of the buyer. When goods which have already been paid for are afterwards found to be short delivered, the failure of consideration takes place on the date of delivery, and limitation in respect of a suit to recover back the sum overpaid will be reckoned from that date. **ATUL KRISHNO BOSE v. LYON & Co.**

[I. L. R., 14 Calc., 457]

11. ———— *Suit to recover purchase-money—Failure of consideration—Cause of action, Accrual of.*—Purchase-money paid for a consideration which has wholly failed is money received for the use of the buyer, and a suit to recover back the money is thus governed by art. 62 of sch. II of the

LIMITATION ACT, 1877—continued.

Limitation Act. *A* purchased a share of joint property from a member of a Mitakshara family, but his suit to recover possession of it was dismissed on the ground that the sale, having been made without the consent of the other co-parceners, was void under the law. *A* then brought a suit to recover back the purchase-money by reason of failure of consideration. *Held* that the failure of consideration, although it did not become apparent until the former suit was brought and failed, was a failure from the beginning, and time ran from the date when the purchase-money was paid. **HANUMAN KAMUT v. HANUMAN MANDUR I. L. R., 15 Calc., 51**

12. ———— *Act XI of 1859, s. 31—Suit to recover surplus sale-proceeds of a sale for arrears of Government revenue.*—Where *A* instituted a suit in November 1889 to recover from the Secretary of State for India in Council the surplus sale-proceeds of three talukhs sold for arrears of Government revenue on the 3rd of October 1877 and which were in the hands of the Collector, *Held* that the suit was governed by art. 62, sch. II of the Limitation Act, and was therefore barred. **SECRETARY OF STATE FOR INDIA v. FAZAL ALI**

[I. L. R., 18 Calc., 234]

See SECRETARY OF STATE FOR INDIA v. GURU PROSHAD DHUR I. L. R., 20 Calc., 51

13. ———— *and arts. 97, 120—Suit for money paid by a pre-emptor under a decree for pre-emption which has become void—Suit for money had and received for plaintiff's use—Suit for money paid upon an existing consideration which afterwards fails.*—Pending an appeal from a decree for pre-emption in respect of certain property conditional upon payment of Rs1,595, the pre-emptor decree-holder, in August 1880, applied for possession of the property in execution of the decree, alleging payment of the Rs1,595 to the judgment-debtors out of Court, and filing a receipt given by them for the money. This application was ultimately struck off. In April 1881, judgment was given in the appeal, increasing the amount to be paid by the decree-holder to Rs1,994, which was to be deposited in Court within a certain time. The decree-holder did not deposit the balance thus directed to be paid, and the decree for possession of the property accordingly became void. In 1882 the decree-holder assigned to *K* his right to recover from the judgment-debtors the sum of Rs1,595 which he had paid to them in August 1880. In December 1883, *K* sued the judgment-debtors for recovery of the Rs1,595 with interest. *Held* that art. 62 of the Limitation Act did not govern the suit, but that art. 97, and, if not, art. 120, would apply, and the suit was therefore not barred by limitation. **KOTI RAM v. ISHAR DAS**

[I. L. R., 8 All., 273]

14. ———— *and art. 132—Suit to establish right to here* ———— *the parties, who were desais of* ———— *to their "desaigiri" allowance, enjoyed an allowance, called "amin sukhd." In 1817 the plaintiff sued the defendant's father and the Collector of Kaira for a share of the allowance; but as the whole of it had been reserved by the Collector to the defendant's*

LIMITATION ACT 1877—*cont nued*

their share and *C* recover d less *A* family su t for partition b t w e e n *A* *B* and *C* was n 1862 com prom s d and t was agreed that all cla ms b t w e e n the part es should be cons dered as settled but t

reversing case in *LOTI ALI KHAN v AFZULONISSA BEGUM* 3 W R 113

3 ————— *Su t for money had and rece ved by one of jo nt decree holders*—*A* decree obta ned by *A* and *B* was transferred by *B* to *C* without the knowledge of *A* *C* executed the decree and *A* subseq ently sued *C* for h s share of the proceeds *Held* that f *A* had any cause of action

4 ————— *Su t to re over money*

rece ved *RAGHUMONI AUDHICARY v NILMONI SINGH DEO* I L R 2 Cal 393

5 ————— and art. 147—*Su t for over-payments under agreement*—*Deposit*—Where the e was a contract between pla nt ff and defendant that defendant should purchase a dwelling house becam on account of p ant ff and recovery t to

6 ————— and art 118 *Su t for*

LIMITATION ACT 1877—*cont nued*

decree held by *B* dated the 19th August 1871 wh ch d rected the sale of the p roperty n sat sfaction of a clarge declar d thereby the prop rt was a ld in

vers d the Muns f s order *A* then obtain d an order f om the Muns f d rect ng *B* to refund the money wh ch he d d and t was paid to *A* *B* sued *A* to

that the su t as one for money rece ved by the de fendant for the plaintiff s use and was therefore governed by cl 60 sch II of the L m tat on Act *Per STUART C J* and *SPARKIE J*—That the su t was not such a su t but was one for wh ch no period of l m tat on was p o ded elsewhere than in cl 118 of the sch dule and that t was governed by that clause *RAMKISHAN v BHAWANI DAS*

[I L R. 1 All 333]

7 ————— *Su t for damages*—*Su t for money rece ed to plaint ff s use* the holder of

RAMKISHAN v BHAWANI DAS

[I L R. 2 All 354]

See also RAMKISHAN v BHAWANI

[I L R. 1 All 333]

8 ————— and art 120—*Su t for*

rece ved by the defendant for the pla nt ff s use to wh ch th Act XV l m tat on LAL v BA

9 ————— *Fa lu e of c ns d rat n*—*Su t for money had and rece vel for the plaint ff s use*—*Debt*—*Pror* to Septemb r 1879 p cunary

LIMITATION ACT, 1877—continued.

of the Vatandars (Bombay) Act, III of 1874, the Collector passed an order that a contribution should be paid by the holders of a part of the shetsandi vatan towards the annual emolument of the office-holder. As payment was not made, he caused the defaulters' moveable property to be sold on the 18th May 1881 as for an arrear of land revenue, and part of the sale-proceeds to be paid over to the office-holder. The defaulters had, in the meantime, appealed to the Revenue Commissioner, who eventually, on the 17th December 1881, amended the Collector's order by reducing very considerably the amount of contribution to be paid to the office-holder. Thereupon the defaulters filed a suit on the 9th April 1884 to recover from the office-holder the difference between what he had received under the Collector's order and what he ought to have received according to the Revenue Commissioner's order. *Held* that the suit was one for money had and received by the defendant to the plaintiff's use, and as such governed by art. 62 of sch. II of the Limitation Act (XV of 1877). **LADJI NAIK v. MUSABI**

[I. L. R., 10 Bom., 665]

22. ——— *Suit by deshmukh for deductions by Collector from watan.*—Where a Collector in the year 1854 employed certain karkuns to assist a deshmukh in the performance of his duty, deducting the amount of their pay from the deshmukhi watan, but failed to show that the employment of such karkuns was necessary, it was held that the deshmukh was entitled to recover the amount so deducted from his watan, as money received by the defendant to the use of the plaintiffs and not as an interest in immoveable property; that his cause of action was not barred in 1870, for that a new cause of action in respect of such deductions accrued each year in which the deduction was made, and that six years' arrears of such deduction could be recovered under s. 1, cl. 16, of Act XIV of 1859. **RANGORA NAIK v. COLLECTOR OF RATNAGIRI**. 8 Bom., A. C., 107

23. ——— and art. 132—*Suit for money value of fixed quantities of grain payable by tenant to landlord—Nature of such claim for purposes of limitation—Suit to enforce payment of money charged on land—Immoveable property—Nibandha—Money value of goods.*—An inamdar, in a suit against his tenant, established his right to the money value of a fixed quantity of grain to be paid to him yearly by his tenant, and subsequently brought this suit to recover from his tenant the arrears of such payments for ten years at the market rate prevailing in the last month of each of those years. The defendants contended that arrears for only three years were recoverable under the Limitation Act (XV of 1877), and that the rates applicable to ascertain the amount were the Government auction rates. *Held* that the plaintiff's right would, under the Hindu law, be "nibandha," and would under the law rank for many purposes as immoveable property, but that a different principle applied to sums realized and become payable in the hands of him who realized them to the intended recipient. The interest or jural relation of right of such recipient was nibandha, but the particular sum due to him was either money received

LIMITATION ACT, 1877—continued.

to his use, or payable on a contract, and money which would remain due, though the grant constituting the nibandha were cancelled and had ceased to exist after the realization of the money. It being thus distinguishable from the original right which produced it, the claim in this suit was barred by limitation after three years. Money value means the market value, that for which the grain would actually sell, not a merely arbitrary value called auction rates. **MORBHAT PUROHIT v. GANGADHAR KARKARE**

[I. L. R., 8 Bom., 234]

24. ——— *Money deposited for repayment on a contingency.*—The period of limitation for a suit to recover money deposited by the plaintiff with the defendant, upon the understanding that it will be returned in a certain event, should be calculated not under art. 115, but under art. 62 of sch. II of Act XV of 1877. Such period begins to run on the happening of the event. **JOHUBI MAHTON v. THAKOOR NATH LUKEE**

[I. L. R., 5 Calc., 830 : 6 C. L. R., 355]

— art. 63 (1871, art. 61; 1859, s. 1, cl. 9).

— *Suit for interest—Suit for money payable on demand—Suit for money deposited payable on demand.*—The plaintiff in this suit deposited certain money with the defendants, a firm of bankers, on the 30th August 1863. On the 2nd January 1867, an account was stated and a balance found to be due to the plaintiff consisting of the original deposit, and interest on the same calculated at six per cent. per annum. On the 11th February 1876, the defendants having proposed to pay the plaintiff such balance, together with interest on the original deposit, from the 2nd January 1867 to the 15th February 1876, calculated at four per cent. per annum, the plaintiff demanded that she should be paid such interest at the rate of six per cent. per annum. The defendants refused to accede to this demand on the 14th February 1876, and on the 17th of the same month they paid the plaintiff such balance with such interest calculated at the rate they proposed, viz., four per cent. On the 11th February 1879, the plaintiff brought the present suit against the defendants in which she claimed the sum representing the difference between such interest calculated at four per cent. and six per cent., alleging that her cause of action arose on the 14th February 1876. *Held* that the suit could not be regarded as either one for money lent under an agreement that it should be payable on demand, or one for money deposited under an agreement that it should be payable on demand, but must be regarded as one for a balance of money payable for interest for money due, to which cl. 9, s. 1 of Act XIV of 1859, art. 61, sch. II of Act IX of 1871, and art. 63, sch. II of Act XV of 1877, had successively applied, and the suit was barred by limitation. **MAKUNDI KUAR v. BALKISHEN DAS**

[I. L. R., 3 All., 328]

— art. 64 (1871, art. 62).

See **GUARDIAN—DUTIES AND POWERS OF GUARDIANS.** 13 C. L. R., 112

LIMITATION ACT, 1877—continued

father as the officiating desai, the suit was rejected

of action in this suit arose on the day when the officiating desai received the surplus of the allowance freed from the condition of service and available for distribution amongst the deasas as alleged by the plaintiff, and the suit, having been brought within twelve years of that day was not time barred. That the limitation of three years under art 62 of the Limitation Act (XV of 1877), sch II, and not that

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recovered. In a previous suit brought by the plaintiff in 1874 against the same defendants it was decided by the High Court that twelve years' arrears could be recovered. The lower Court now held that this decision continued to bind the parties and that therefore the present claim should be allowed. It accordingly passed a decree for the plaintiff for the

Act (XV of 1877) was only entitled to recover arrears for three years, CHAMANLAL v BAPURHAI

[I L R, 22 Bom, 689]

18. ————— Money received—Trust

MANEKAL AMBATLAL v DESAI SHIVLAL BROHILAL
[I L R, 8 Bom, 426]

15. ————— Suit by sharer of hak

GAERI v HARISUKHPRASAD I L R, 7 Bom., 191

18. ————— Suit to recover arrears—

19. ————— Separation in joint Hindu family—Suit for share in joint property—Limitation Act, sch II, art 127—At the separation of members of a joint family governed by the Benares school of Hindu law in 1885 the unrealized debts

referred to BANOO TEWARY v DOOMA TEWARY
[I L R, 24 Calc, 309]

20. ————— and art 127—Joint Hindu family—Separation—Joint property—After the separation of P and T two members of a joint Hindu family certain bonds continued to be

v BANSIDHARHAI I L R, 9 Bom, 111

17. ————— Practice—Procedure—
Vatan—Cash allowance—Suit for arrears of

defendants contended that under the Limitation Act (XV of 1877) only three years' arrears could be

the Limitation Act was applicable to the suit
MAHAR PRASAD v PARTAB I L R, 6 All, 442

21. ————— and art 109—Suit for money received by defendant to plaintiff's use—
Vatandars Act, III of 1874, s 8—Under s 8

LIMITATION ACT, 1877—continued.

IX of 1871, or art. 64 of sch. II of Act XV of 1877, and was no more than a mere acknowledgment, which, as the suit had then long been barred by limitation, was of no avail. An account stated, in the true sense of the term, and in the sense employed in the abovementioned sections of the Limitation Acts of 1871 and 1877, is where several items of claim are brought into account on either side, and being set against one another, a balance is struck, and the consideration for the payment of the balance is the discharge on each side, each party resigning his own rights on the sums he can claim, in consideration of a similar abandonment on the other side, and of an agreement to pay, and to receive in discharge, the balance found due. *NAHANIDAI v. NATHU BHAI*

[I. L. R., 7 Bom., 414]

12. ———— *Account stated—Acknowledgment of debt.*—The striking of a balance in an account the items of which are all on one side does not amount to an "account stated" in the proper sense of the term. Hence the signature of the debtor to such balance amounts to no more than an acknowledgment of a debt, and, if the debt is barred at the time of signature, will not give rise to any fresh period of limitation in favour of the creditor. *Nahanibai v. Nathu Bhai*, I. L. R., 7 Bom., 414, followed. *JAMUN v. NAND LAL* . . . I. L. R., 15 All., 1

13. ———— and s. 19—*Account settled, but not signed—Oral promise by debtor to pay balance—Commencement of limitation.*—The plaintiff and the defendant, who was his agent, examined the account between them on 13th July 1887 and a balance was found due by defendant, who orally promised to pay it in one month. The account was not signed. The plaintiff sued on 10th July 1890 to recover the amount, and it appeared that the last item in the account to the debit of the defendant was dated 28th May 1887. *Held* that the suit was barred by limitation. *AMUTHU v. MUTHAYYA*

[I. L. R., 16 Mad., 339]

14. ———— *Khata, Suit on a—Limitation—Acknowledgment—Construction.*—A khata consisting of one item only on the debit side, and bearing the mark of the debtor, held to be a mere acknowledgment, and not an account stated. *TRIBHOVAN GANGARAM v. AMINA*

[I. L. R., 9 Bom., 516]

15. ———— *Suit for money on account stated.*—On the 9th October 1875, the book containing the accounts between the plaintiff and the defendant, kept by the plaintiff, was examined by the parties, and a balance was struck in the plaintiff's favour, which was orally approved and admitted by the defendant. On the 2nd April 1877 the plaintiff sued the defendant for the amount of this balance "on the basis of the account book." *Held* that the suit was in effect one on accounts stated falling within art. 62, sch. II of Act IX of 1871, and could be brought within three years from the 9th October 1875 for the total balance struck, and being so brought was within time. *NAND RAM v. RAM PRASAD*

[I. L. R., 2 All., 641]

LIMITATION ACT, 1877—continued.

16. ———— *Suit for money due on accounts stated—"Title" acquired under Act IX of 1871—Suit for money lent.*—The plaintiff sued the defendant for money due upon accounts stated between them in December 1874, when Act IX of 1871 was in force. Such accounts were not signed by the defendant. The suit was instituted after Act XV of 1877, which repealed Act IX of 1871, had come into force. *Held* that the plaintiff's right to sue upon such accounts within three years from the date the same were stated was not a "title" acquired under Act IX of 1871 within the meaning of s. 2 of Act XV of 1877, which, under the provisions of that section, was not affected by the repeal of Act IX of 1871, and the suit was not governed by the provisions of Act IX of 1871 but by those of Act XV of 1877, and that therefore, the accounts not being signed by the defendant, the plaintiff could not claim the benefit of art. 64 of sch. II of the latter Act, but must be regarded as suing merely for money lent. *THAKURXAI v. SHEO SINGH RAI*

[I. L. R., 2 All., 872]

17. ———— *Statement of account unsigned—Cause of action.*—The plaintiffs claimed on a statement of account in writing, dated the 18th October 1877; this statement of account was not signed by the defendant. The date of the institution of the suit was the 30th September 1880. A Division Bench of the High Court held on the appeal, on the case coming up before them on the 18th October 1877, that the suit was not based upon any express contract made between the parties; and that the transaction which took place on that date did not constitute an implied contract, and that therefore these contentions were not open to the plaintiffs, but the Court referred the question whether the plaintiffs' claim, so far as it was based on the statement of account on the 18th October 1877, fell within art. 64 of sch. II of Act XV of 1877. *Held* by MITER, PRINSEP, and McDONELL, JJ.—That the question referred was a matter of limitation arising in the case which had not been decided in the order of reference, and without such a decision the case could not be disposed of, and as to that point, that the statement of account not being signed by the defendant did not fall within the terms of art. 64 of sch. II of Act XV of 1877. *Held* by GARTH, C.J., and TOTTENHAM, J.—That the Division Bench, having held that the transaction afforded no basis for a suit, had disposed of the case, and the question referred was therefore immaterial. *DUKHI SARU v. MAHOMED BIKHU*

[I. L. R., 10 Calc., 284; 13 C. L. R., 445]

18. ———— *Account stated—Agreement to pay debt by instalments—Suit for whole amount due.*—A being the holder of a decree against B, B, on the 7th July 1875, entered into a kistibandi and filed it in Court, setting out that he would pay off the debt due under the decree by certain instalments, and that, in default of payment of one instalment, the whole amount of the debt might be recovered by taking out execution of the decree. By the kistibandi certain immoveable property was pledged to secure the debt, but the kistibandi was not

LIMITATION ACT, 1877—continued

1 ———— *Account stated—Signature to*—An account stated within the meaning of art 62 sch II of Act IX of 1871 need not be signed by the debtor *TARNEY CHURN NUNDY v ABDUR ROHMAN* 2 C L R, 346

2 ———— *Account stated—Simultaneous verbal agreement—Simultaneous written agreement*—A simultaneous verbal agreement can not extend the ordinary period of limitation for a suit on an account stated. An agreement to extend the period must be in writing and signed by the defendant or his agent *DAGDUSA v SHAMAD* [I L R, 8 Bom, 542]

3 ———— *Suit on account stated—Acknowledgment in writing*—It is not necessary in a suit on an account stated to entitle the plaintiff to recover items of the debt which became due three years before suit that the defendant should have acknowledged the accounts in writing *NAND LAL v NAIR RAM* 7 N W, 105

4 ———— *Suit on accounts stated orally or in writing*—The period of limitation for suits on accounts stated is the same whether the accounts are stated verbally or in writing and is governed by Act XV of 1877, sch II cl 64 *AKBAR v KHAN* [I L R, 7 Cal, 256 8 C L R, 533]

Under Act XIV of 1859 it was held that unless the original right had been kept alive by a written acknowledgment or the transaction of adjustment of account amounted to a new and distinct contract limitation ran from the date of the original debt for the balance of which the suit was brought *KUNHYA LALL v BUNSEE Agra, F B, 94 Ed. 1874, 71*

5 ———— *Verbal admission of correctness of account*—A mere verbal admission of the correctness of an account the items of which were barred by the Act was not sufficient to create a new starting point *SURBAHAMA v EASTULU MUTTUSAMI* 3 MadL, 378

UMEDCHAND HUKAMCHAND v BHAKIDAS LAL CHAND 5 Bom, O C, 16

See BROOKS v GIBBOY 19 W R, 244

7 ———— *Settlement of accounts—Admission of balance—New contract*—Where a settlement of accounts is made between a commission agent and his principal and a sum found and admitted to be due by one to the other the date on which this is done might be regarded as that of a new contract to pay within the meaning of Act XIV of 1859 s 1, cl 9, from which limitation could be counted *BISSESSUR GILL v SEER KISHEN SHAHA CHOWDHRY* 24 W R, 440

BENARSEE DOSS v KHOOSHAL CHUND KHOOSHAL CHUND v PALMER 2 Agra, Pt II, 170

LIMITATION ACT, 1877—continued.

8 ———— *Suit for balance of account*

See RAMKRISTO PAUL CHOWDHRY v HURRY DASS KOONDGOO Marsh, 219 1 Hay, 569

MARINUTHU v SAMINATHA PILLAI [I L R, 21 Mad, 366]

9 ———— *Account settled and balance struck—New contract*—Where an endorsement on a bond showed that an account was made up a balance struck and that it was agreed to be paid at a future day with interest—Held in a suit for the amount as due on an acknowledgment made on the bond

7 W, 10.

10 ———— *Adjustment of accounts—Demand*—In order that an unsigned adjustment and settlement of accounts may operate to give a fresh starting point from which limitation commences to run there must be cross demands the striking of the balance between which constitutes a new consideration for the promise on the part of the person against whom the balance is found to pay the balance so settled *Mulchand Gulabchand v Girdhar Madhab 8 Bom A C 6* followed *HARGOPAL PREM-SUKHDAS v ABDUL KHAN HAJI MUHAMMAD*

[9 Bom, 439]

In the case there followed it was held that where

[8 Bom, A C, 6]

11 ———— *Account stated—Signed balance of account—Acknowledgment*—A sum of money was deposited with the defendant's firm in 1857. Three years afterwards interest was paid by the firm, which was debited in the ledger to the creditor against a credit of a like amount. In 1875 a balance was struck and carried to another account signed by the defendant and acknowledging the same to be due for balance of old account. In 1878 the account was again balanced and the balance again transferred to a fresh account similarly signed. Held that the transaction did not amount to an account stated within the meaning of art 62 sch II of Act

LIMITATION ACT, 1877—continued.

be applied to a suit for failure to pay the bond debt.
COLLECTOR OF KATAWAH v. BRTI MAHAJAM

[I. L. R., 14 All., 102

— art. 67 (1871 art. 68).

See DEKKAN AGRICULTURISTS' RELIEF ACT,
1879. c. 72 . I. L. R., 9 Bom., 461

— art. 68 (1871, art. 68)—*Bill of exchange—Dis honour of bill—Suit against acceptor.*—M, on the 12th October 1855, drew a bill of exchange, payable three months after date, in favour of B, which was accepted by J. Before the bill became due, B endorsed it to P, who again endorsed it for full value to M B & Co., of which firm M L was a partner. M D & Co. discounted the bill with G, who presented it at maturity to J, who dishonoured it. G thereupon sued M L and recovered a decree, which M L satisfied. M L thereupon brought the present suit, on the 18th February 1865, against J as the acceptor of the bill for the amount he paid under G's decree. *Held* (confirming the decision of NORMAN, J.) that the suit was barred by limitation, the plaintiff's cause of action having accrued when the bill became payable and the acceptor refused to pay. MOHENDRO LALL BOSE v. JADUN KISSEN SINGH . 14 W. R., O. C., 5

S. C. in the Court below . Bourke, O. C., 157

— art. 72 (1871, art. 71)—*Promissory note "after six months when demand was made"—Necessity of demand.*—Where a promissory note was made payable "after six months, whenever the payee should demand the same," with interest, it was held that the law of limitation began to run upon the expiration of six months from the date of the note. JEAN-NEESA LADLI BEGAM SAHEB v. MANKJI KHARSEJI (7 Bom., O. C., 36

See MADHAYBHAI SHIVBHAI v. FATTESING NUTHADHAI 10 Bom., 487

— art. 73 (1871, art. 72).

1. ——— *Promissory note payable on demand.*—Under Act XIV of 1859, the period of limitation on a promissory note payable on demand commenced to run from the date of the note, and not from the date of demand. VINAYAK GOVIND v. BABAJI I. L. R., 4 Bom., 230

HEMPANMAL v. HANUMAN 2 Mad., 472

TARACHAND GHOSE v. ABDUL ALI

[8 B. L. R., 24; 16 W. R., O. C., 1

S. C. in Court below. ABDUL ALI v. TARACHAND GHOSE 6 B. L. R., 292

The Act of 1871, however, altered the time from which the cause of action arose in such a case to the date when the demand was made; but under the present Act, the law was again altered and now remains as it was held to be under the Act of 1859.

2. ——— *Promissory note payable on demand—Cause of action.*—The defendant gave the plaintiff a promissory note on the 5th August 1869, payable on demand with interest at 5 per cent per annum. No sum either in respect of principal or interest was paid on the note, and payment was

LIMITATION ACT, 1877—continued.

demanded for the first time in November 1875. Act XIV of 1859 contained no provision as to the date of the accrual of the cause of action in a suit on a promissory note payable on demand, but Act IX of 1871, which repealed Act XIV of 1859, and which applied to suits brought after the 1st April 1873, provided that the cause of action in such a suit shall be taken to arise on the date of the demand. In a suit brought on the note after the demand,—*Held* that the cause of action arose at the date of the note, and as a suit on it would have been barred under Act XIV of 1859 if brought before the 1st April 1873, the subsequent repeal of that Act would not revive the plaintiff's right to sue. NOCCOR CHUNDER BOSE v. KALLY KOOMAR GHOSH [I. L. R., 1 Calc., 328

See VENKATA CHELLA MUDALI v. SASHAGHERRY RAU 7 Mad., 283

and MOLAKATALLA NAGANNA v. PEDDA NARAYANA [7 Mad., 288

3. ——— *Act XIV of 1859—Act IX of 1871—Promissory note payable on demand.*—On the 12th December 1864 the plaintiff sold seven bars of gold to the defendants, and deposited with them the value thereof, to run at interest and payable on demand. The defendants entered the amount in their own books, and furnished the plaintiff with a pass-book, which contained this entry: "The account of the amount deposited by B (the plaintiff) with P (the defendants), of the city of Poona. The details of it are as follows: We have debited the amount to ourselves, and will return it whenever you demand it. Shake 1786 (A. D. 1864)." The defendants adjusted the account in the plaintiff's pass-book in July 1865 in these words: "Balance this day, the 1st Jyest vadya, Shake 1787, R1,159-2-0. Interest on this sum will run from 1st Jyest vadya, Shake 1787 (A. D. 1865)." This entry was signed by the defendants. The plaintiff drew several times against this account within the first year, sometimes taking cash and sometimes gold. On the plaintiff's demanding the money in April 1877, the defendants refused to pay it. The plaintiff therefore filed a suit against them on the 25th June 1877. The defendants pleaded limitation. *Held* that, regarding the entry made by the defendants in the plaintiff's book as a promissory note, the suit was barred by the law of limitation. VINAYAK GOVIND v. BABAJI I. L. R., 4 Bom., 230

These are cases where the suit was, when Act IX of 1871 came into force, already barred under Act XIV of 1859. But in a Madras case the principle was held to be the same where the suit was not barred under that Act at the time Act IX of 1871 came into force.

4. ——— *Suit on promissory note executed while Act XIV of 1859 was in force, but not barred under that Act—Cause of action.*—In a suit brought after the 1st April 1873 on a promissory note for a sum payable on demand, executed while the old Limitation Act (XIV of 1859) was in force, but not barred under that Act at the time the new Limitation Act (IX of 1871) came into force, the period of limitation ought to be computed from the date of the note, and not from that of the demand. The new Act merely alters the point of time as to notes executed after its

LIMITATION ACT, 1877—con'ued.

registered *B* failed to pay the first instalment, which fell due on the 14th August 1875, and *A*, on the 19th June 1878, applied for execution of his

19. ———— *Account stated—Evidence of existing debt—Fresh Contract Law in India—*

sued on as implying a promise to pay. Formerly this was the rule also in Bombay (as shown by the earlier cases) where the account was signed. If, however, it was not signed, it could not be sued on as a new contract. The Indian Limitation Act required an acknowledgment or admission of a debt to be

MOHTA . . . I. L. R., 22 Bom., 513

20. ———— *Suit on adjustment of*
lord and tenant, and a balance found to be due from the tenant, —Held that an action to recover such balance with interest was not a suit for arrears of

21. ———— *Suit on account stated by guardian as agent of minor.—A suit on an account*

LIMITATION ACT, 1877—continued.

stated against a minor cannot succeed unless it be shown that the act of the guardian acting as agent in the matter of the settlement of account is beneficial to the interests of the minor. *AZUDIN HOSSAIN v. LEYD* . . . 13 C. L. R., 112

——— art. 65 (1871, art. 63)—*Surety on bond undertaking to pay "eventually"*—*A* verbally became surety upon a bond executed by *B* for repayment, in May 1872, to the plaintiff, of certain advances, promising, "if *B* does not pay eventually (sheesh porjanto) I will." Default was made, and in April 1878 the plaintiff filed a suit against both *B* and *A*, the suit being clearly barred as against the latter. Held that the words "sheesh porjanto" could not be taken as limited to the time specified in the bond, and that the lower Court, in order to determine whether the suit was barred

——— art. 68 (1871, art. 65).

2. ———— *Bond—Interest payable*
——— *Demand at a specified date—Limitation*

3. ———— *and art. 116—Bond*

LIMITATION ACT, 1877—continued.

But see *GUMNA DAMBERSHET v. BHIKU HARIDA*
[I. L. R., 1 Bom., 125]

4. ————— *Bond payable by instalments—Stipulation to recover by execution—Cause of action.*—Where a certain amount of money was recoverable under an instalment bond by the sale of the property hypothecated in it, and it was one of the stipulations of the bond that the whole amount might be recovered by execution of decree, on default of payment occurring at any one of the stipulated periods for the payment of an instalment, —Held that, as a separate suit could not be brought for the whole amount on the occasion of any default which occurred before the termination of the last kist, the whole amount could not, for the purposes of the law of limitation, be held to be due on the occasion of any such default. *JUGGUT MOHINEE DOSSEE v. MONOHUR KOONWAR* . . . 25 W. R., 278

5. ————— *Act, 1871, art. 75—Bond payable by instalments—Waiver of default—Cause of action.*—A suit was brought upon an instalment bond conditioned upon default in payment of any one or more instalments that the whole sum should be exigible. Default was made in payment of several instalments, but subsequently payments were made and accepted by the plaintiff on account of the unpaid instalments. This suit was instituted more than three years after the first default in payment of an instalment, but within three years from the time when the last payment of an instalment had been made. The defendant pleaded limitation. Held that limitation ran from the date on which the first default was made in payment of an instalment, in respect of which default the benefit of the provision in the 75th clause of second schedule of Act IX of 1871 was not waived. *UNCovenanted SERVICE BANK v. KHETTERMOHUN GHOSE* . . . 6 N. W., 88

6. ————— *Bond payable by instalments—Waiver of default.*—A bond, dated the 23rd August 1870, stipulated payment of Rs39 for principal and Rs9-12-0 for interest, making in all Rs48-12, by monthly instalments of Rs1-8-0, with the conditions, first, that in default of payment of a monthly instalment, interest should be paid at 1½ per cent. per mensem till the whole amount was paid, and, second, that in default of payment, of any two of the monthly instalments, the whole of the principal should become payable at once, exclusive of interest from the date of the bond. Two instalments being overdue on the 24th October 1870, the whole principal became payable at once. In an action brought by the obligee on the 4th June 1874 for the recovery of the money, —Held that the claim was wholly barred, as the first condition amounted only to a proviso that the obligee might exercise a right of waiver and accept payment by instalments instead of suing for the whole, and there was nothing to show that he had exercised such right of waiver. *NAVALMAL GAMBHIRMAL v. DHONDA BIN BHAGVANTRAM* . . . 11 Bom., 155

7. ————— *Bond payable by instalments—Waiver.*—On the 24th May 1866, H gave A a bond payable by instalments, which provided that, if default were made in the payment of one instalment,

LIMITATION ACT, 1877—continued.

the whole should be due. The first default was made on the 28th June 1866. No payment was made after Act IX of 1871, sch. II, No. 75, came into force. Held in a suit upon such bond that limitation began to run when the first default was made, and no waiver, before Act IX of 1871 came into force, could affect it. *AHMAD ALI v. HAFIZA BIBI* . I. L. R., 3 All., 514

See *RADHA PRASAD SINGH v. BHAGWAN RAI*
[I. L. R., 5 All., 269]

8. ————— *Waiver—Proof—Abstinence from suit.*—Mere abstinence from suit is not sufficient to prove waiver of a right to enforce a condition whereby, upon default of payment of an instalment, the whole debt becomes due. *SETHU v. NAYANA* . . . I. L. R., 7 Mad., 577

9. ————— *Debt payable by instalments—Waiver—Proof.*—Where a bond for the payment of money by instalments contains a condition that the whole sum then remaining due shall become payable on failure to pay any one instalment, the creditor, who seeks to recover instalments which in due course would have been due subsequently to the date on which the recovery of the debt in full has become barred, must prove a waiver of his right to enforce the condition. Waiver is not to be inferred from mere abstinence to enforce the condition. *GOPALA v. PARAMMA* . I. L. R., 7 Mad., 583

10. ————— *Bond—Waiver—Cause of action.*—The mere acceptance of instalments after default, by the obligee of a bond payable by instalments, which provides that, in case of failure to pay one or more instalments, the whole amount of the bond due shall become payable, does not constitute a "waiver," within the meaning of art. 75, sch. II of Act IX of 1871, of the obligee's right to enforce such provision. In the case of such a bond, the cause of action arises on the first default; and limitation runs from the date of such default. *MUMFORD v. PEAL* . . . I. L. R., 2 All., 857

11. ————— *Contract to pay by instalments—Default in paying an instalment of a debt payable by instalments.*—When a debt is made payable by instalments, with a proviso that, on default of payment of any one instalment, the whole debt, or so much of it as may then remain unpaid, shall become due, limitation runs, under Act IX of 1871, or Act XV of 1877, from the time of the first default. A subsequent acceptance of the instalment in arrear operates as a waiver, and suspends the operation of the law of limitation; but merely allowing the default to pass unnoticed does not. *IN THE MATTER OF CHENI BASH SAHA v. KADUM MUNDUL* . I. L. R., 5 Calc., 97

12. ————— *Decree payable by instalments—Default—Waiver—Estoppel—Application for execution as provided for in case of default—Application to recover instalments.*—A decree for the payment of money directed that an amount less than the amount sued for should be paid by instalments, and that, if default were made in payment of one instalment, the amount sued for should be payable. Default having been made, the decree-holder, on the 7th May 1877, applied for execution of the

LIMITATION ACT, 1877—continued,

enactment from which the period is to be reckoned and does not make a demand a mode of extending the period of limitation **CHINNASAMI IYENGAR alias STREENVASSA RAGHAVA CHARYAR v GOPALA CHARRY** 7 Mad., 392

5 ——— *Promissory note—Novation*—The holder of a promissory note payable on demand dated 14th April 1870 demanded payment on 8th December 1872. The maker then paid interest in advance up to 1st April 1873 upon the condition that the holder should make no demand until that date. *Held* that this transaction amounted to the substitution of a new contract for that contained in the promissory note that the period of limitation must be reckoned from 1st April 1873, and that consequently a suit to recover the balance due on the note, instituted on 24th March 1876 was not barred. **NATA HIRA v JANARDAN RAMACHANDRA** 1 L R, 1 Bom., 503

The question was raised under the Act of 1871, whether the bringing of an action to recover the amount due on the note could be regarded as a sufficient demand but was undecided.

See **MADHAVBHAI SHIVBHAI v PATTESING NATHU BHAI** 10 Bom., 487

6 ——— *Promissory note payable on demand—Cause of action*—The suit was brought on an instrument in the nature of a promissory note payable on demand. The note was executed on 20th November 1871 and the suit was filed on the 17th

the question whether the suit was barred or not by the law of limitation must be determined by sch. II of that enactment, which gives three years from date of demand. *Held* also that the suit was not barred, there being no suggestion of any demand having been made before the suit was instituted. **MADHAVAN v ACHUDA** 1 L R, 1 Mad., 301

——— art. 74 (1871, art. 74)

Under Act XIV of 1859 the decisions seem to have been in accordance with this article.

See **MUNNA JHUNNA KOONWAR v LALJEE ROY** [1 W. R., 121]

ULTAN ALI KHAN v RAM LALL
[Agra, F B, 83 Ed 1874, 63]

——— art. 75 (1871, art. 75)

See **BOND** 1 L R., 4 Bom., 86
[1 L R., 3 Mad., 61]

1. ——— *Promissory note payable by instalments*—A promissory note dated 2nd April 1868 stipulated that the principal amount with interest was to be repaid by half yearly instalments of Rs150 each and that in the event of any one of these instalments not being punctually paid the whole amount was to become payable at once. Default was made in payment of the first instalment, which fell due on 2nd October 1868. In an action brought on 19th October 1871 for the recovery of the whole amount, ——— *Held* that the right to bring the suit under

LIMITATION ACT, 1877—continued

Act XIV of 1859, s 1 cl 10 accrued to the plaintiff.

for payment yet the defendants having paid the

has become due **GUMNA DAMBERSHET v BHIEU HARIBA** 1 L R, 1 Bom., 125

2 ——— *Money payable by instalments*—In a suit for recovery of a certain sum of money, the present defendant intervened by a petition agreeing to pay the whole amount due on the bond if the first instalment was not paid by the debtor on the 1

MOHAN BISWAS
[3 B L R., A C, 18 11 W R, 330]

3 ——— *Promissory note payable by*

and severally executed a promissory note to **M T B,**

action runs from the non payment of an instalment, and that acceptance of subsequent instalments on a note so payable is not a waiver of the limitation which has so commenced to run against a surety. **BREEN v BALFOUR**. Bourke, O C, 120

NARAYANAPPA v BHASKAR PARMAYA
[7 Bom., A C, 125]

RAM KRISHNA MAHADEV v BAYAJI SANTAJI
[5 Bom., A C, 35]

LIMITATION ACT, 1877—continued.

date of interest and principal, the obligee made them liable to pay the full amount of the loan debt. The loan deed contained the stipulation that it should be repaid with the oblige to claimant, if necessary, before the full amount of the loan on the failure of any of the terms stipulated payment, or on the full expiry of the period of three years. Held that the loan was not an instalment loan and therefore art. 75, sch. II of Act XV of 1877, was inapplicable. Held by STRAUB, C.J., that limitation commenced after the expiration of the three years allowed by the deed for payment of the debt. Held by STRAUB, J., that art. 80, sub. rule of Act XV of 1877, applies to the debt, and limitation would run from the date when the loan became due; that according to the stipulation in the loan it would become due on failure in payment or due date of both the interest and principal, and not on failure in payment of either of them only. Held further that arts. 67 and 68, sch. II of Act XV of 1877, were not applicable to the suit. *Butt v. Stewart*. I. L. R., 2 All., 322

17

Decree payable by instalments—Failure to pay whole sum decreed to fall due—Right of decree-holder to waive his right to execute the whole decree—Waiver.—A provision in a decree made payable by instalments, by which the whole amount of the decree is to become due upon default in payment of any instalment, is a provision enuring for the benefit of the decree-holder alone, and he is at liberty to take advantage of it or to waive it as he thinks fit. In this case it was held that he did waive his right, and therefore his right to recover the amount by instalments subsequently was not barred, limitation not running against him from the original default. *RAM CULPO BHATTACHARJEE v. RAM CHUNDER SHOME*

[I. L. R., 14 Calc., 352]

18.

Instalment bond—Default in one instalment, the whole amount to fall due—Waiver.—The mere fact that a creditor has done nothing to enforce a condition in an instrument, under which the whole debt became due on failure in the payment of one instalment, is no evidence of waiver within the meaning of art. 75 of the Limitation Act. *NONOPIR CHUNDER SHAMA v. RAM KRISHNA ROY CHOWDHURY*

[I. L. R., 14 Calc., 397]

19.

Bond payable by instalments—Default in payment of an instalment—Waiver of a condition of forfeiture on default in payment of one instalment—Acceptance of an instalment overdue.—A bond payable by instalments provided that, if default was made in paying one instalment, the whole debt should become due. The amount of the third instalment was paid five days after it became due. The lower Court found that this payment was accepted by the obligee as a payment made on account or in satisfaction of the third instalment, and not as a mere part payment on reduction of the whole debt, and that the circumstances indicated an intention to waive the forfeiture, though there was no express waiver. Held that the acceptance of the amount of the third instalment constituted a waiver within the meaning of art. 75

LIMITATION ACT, 1877—continued.

of sch. II of the Limitation Act, 1877. *NAGAPPA v. ISMAIL*. I. L. R., 12 Mad., 192

20.

Execution of decree—Decree payable by instalments—Default—Waiver.—A decree was made for payment of the decretal amount by monthly instalments running over a period of twelve years; and it was provided that on default the decree-holder might execute the decree as a whole for the balance then due. In 1883, a default was made, and in 1881 the decree-holder filed an application for execution in respect thereof, but did not proceed with it, and continued to receive the monthly instalments. In 1887, he made another application for execution, in which he relied on the same default. Held that the default, if it was one, had been waived by the decree-holder, and that such waiver was a good defence to the present application. *Munford v. Peal*, I. L. R., 2 All., 857, and *Ayutullah Dalal v. Kally Churn Mitter*, I. L. R., 7 Calc., 56, distinguished. *BUDDHU LAL v. BEKKHAB DAS* [I. L. R., 11 All., 482]

21.

Payment of bond debt by instalments—Right to sue for whole debt on default of payment of any instalment—Waiver of right to sue, Nature of proof of.—On the 15th August 1891, the defendant executed a document admitting that he was indebted to the plaintiffs in the sum of Rs. 125, and agreeing to pay the amount in seven instalments, the first (Rs. 40) to be paid in August 1891, the second on the 28th April 1892, and the remainder at intervals of six months. The document contained the following clause: "If any of the instalments is not duly paid, I am to pay the whole amount with interest at eight annas per cent. per annum." The defendant failed to pay the first instalment, which the plaintiffs admitted was now barred, but on the 10th June 1895 the plaintiffs filed this suit to recover the remainder of the debt and interest. The defendant pleaded that under the above clause the whole sum became due on the failure to pay the first instalment; that the right to sue which then accrued was never waived, and that the suit was now barred by limitation. Held that the plaintiffs having failed to prove a waiver of the right of suit which accrued to them in August 1891, the suit was barred by limitation. The waiver contemplated by art. 75 of sch. II of the Limitation Act (XV of 1877) must be either an agreement between the parties, or such conduct as will itself afford clear evidence of a legal waiver. *KANKUCHAND SHYCHAND v. RUSTOMJI HORMUSJI*

[I. L. R., 20 Bom., 109]

art. 80 (1871, art. 80)—*Suit on unregistered bond pledging moveable property for repayment.*—In a suit on an unregistered bond, whereby certain moveable property in the debtor's possession was pledged as security for the repayment of principal and interest,—Held that the suit was governed by art. 80, sch. II of the Limitation Act, 1877. *VITLA KANTI v. KALEKARA* I. L. R., 11 Mad., 153

art. 81 (1871, art. 82)—*Suit by surety of lessee for refund of rent paid to wrongful heir of deceased lessor.*—In a suit by the surety of

LIMITATION ACT, 1877—continued

allowed to be executed on to issue for such amount but allowed it to issue for the balance of the instalment for Sep

13 ————— *Construction of decree—Decree payable by instalments* Execution of decree—A consent decree for Rs 30 directed payment of the money by fifteen half yearly instalments of Rs 25 each in Cheyt and Assn of each year the first instalment to be paid in the month of Cheyt

and under the decree The District Judge allowed execution to issue for all sums which had

14 ————— *Verbal contract—Debt payable by instalments*—A entered into a verbal

LIMITATION ACT 1877—continued

ment Four years after the first instalment was due B sued A to recover the sum due on the various instalments not barred by limitation Held that B was not bound to sue for the whole amount due directly on A's failure to pay the three successive instalments See also—Art 75 sub II of Act XV

15 ————— *Cause of action—Bond—Payment by instalments—Liability for whole amount on failure of payment of instalment*—On

and policy required by the said Hanmantram Sadhuram Pty his executors administrators or assigns—pay the whole amount which may then

of which was paid on the 2nd December 1898 being that which had fallen due on the 4th November 1879 No further instalments were paid but no demand for payment of the entire sum was made by the bond was made by the plaintiff until the 30th January 1884 The plaintiff filed this suit on the 28th April 1884 The defendant contended that the plaintiff's

were made The cause of action did not arise again until the date of demand viz the 30th January 1884 HANMANTRAM SADHURAM & BOWLES I. L. R. 8 Bom 561

16 ————— *Bond payable by instalments—Cause of action—Limitation Act 1877* arts 67 69 and 80—B and S executed a bond

LIMITATION ACT, 1877—continued.

the plaintiff, or that the defendant had assented to a portion of the firm's debt being carried to his separate account. *Held* that the plaintiff could not recover this sum with interest, as an item of a mutual, open, and current account, where there had been cross-demands between the parties. (*See Limitation Act, XV of 1877, sch. II, cl. 85.*) **ROY DHUNPUT SING BAHADOOR v. LEKRAJ ROY** 1 C. L. R., 525

11. ———— Mutual accounts—Adjustment—Admitted item within period of limitation.—A mutual, open, and current account, which was kept according to the Sumbut year, having been adjusted in Assin Sudi 1931 S., corresponding with October 25th, 1874, the date of the last admitted item, a suit was subsequently, on the 6th December 1877, filed for the balance due upon such adjustment. *Held* that, even assuming that on the date of adjustment the account ceased to be mutual, open, and current, art. 85 of sch. II of the Limitation Act (XV of 1877) was applicable, and that accordingly limitation ran from the close of the year 1931 S., i.e., the 20th April 1875. **GONESH LALL v. SHEO GOLAM SINGH** 5 C. L. R., 211

12. ———— Mutual current accounts—Limitation Act, 1871, art. 62.—The manager of A, the proprietress of an indigo factory, on the 20th December 1869, paid into the kothi or bank of B, a banker, the sum of Rs. 1,200 to the credit of A, and from that time onwards sums of money were drawn by A's manager out of B's bank, and applied to the purposes of A's factory; the balance, though generally against A, fluctuated, A's account being usually overdrawn, but there being sometimes a balance in her favour, created by payments made on her account into B's bank. The 2nd of July 1872 was the last occasion that any balance was due from B to A. Payments continued to be made on behalf of A into B's bank up to the 12th of June 1873, when a sum of Rs. 1,083-8 was paid into her account; but, notwithstanding this payment, the balance of account was on that date against her. After the 12th of June 1873, B continued to make payments on behalf of A, and also to render monthly accounts in which he charged A with such payments, and also with the principal of, and interest upon, the balance due on previously-rendered accounts. This continued till the month of January 1874, when B for the last time rendered a monthly account to A, the last item in which was a payment made on the 6th January 1874. On the 23rd December 1876, B instituted a suit against A to recover the balance of principal and interest due to him on the footing of the last account rendered by him to A. *Held* that the account between A and B was not, and never had been, a mutual, open, and current account, and that the suit was therefore barred by limitation; and that the payments made by B on behalf of A within the period of limitation, even if authorized, did not have the effect of keeping alive his previous claim against her. *Held* also that, even if the dealings and transactions between A and B could be so construed as to show that there had been at any time a mutual, open, and current account between them, that mutual

LIMITATION ACT, 1877—continued.

relation terminated on the 2nd July 1872, or if not, then on the 12th June 1873, when the last payment was made on A's account into B's bank. **MAHOMED v. ASHRUFUNNISSA** I. L. R., 5 Cal., 759

S. C. ASKERY KHAN v. ASHRUFUNNISSA

[6 C. L. R., 112]

13. ———— Mutual accounts—Reciprocal demands.—From the month of September 1873 until the month of May 1874 the plaintiffs at Bombay and the defendant at Karachi had dealings with one another. It was the practice for the defendant at Karachi to draw hundis upon the plaintiffs at Bombay, which the plaintiffs duly accepted and paid at Bombay; and in order to put the plaintiffs in funds, the defendant was in the habit of drawing hundis upon other firms in Bombay in favour of the plaintiffs, the amount of which hundis the plaintiffs realized from time to time at Bombay. Until the 8th January 1874 the balance of the account was sometimes in favour of the plaintiffs and sometimes in favour of the defendant. After that date, the balance of the account was always in favour of the plaintiffs, who continued to make advances up to the 10th May 1874. The last payment made by the defendant was on the 27th April 1874. The last advance made by the plaintiffs was on the 10th May 1874. On the 10th May 1874 the total balance due by the defendant was Rs. 514-12-2. The plaintiffs calculated interest on this sum up to the 9th April 1877, and on the 19th April 1877 filed the plaint in this suit to recover the said amount. The defendant pleaded limitation. The plaintiffs contended that the account between them and the defendant was a mutual account, and that, under cl. 87 of sch. II of the Limitation Act (IX of 1871), the period of limitation dated from the day of the last advance made by them to the defendant,—viz., 10th May, 1874. *Held* on the authority of *Ghaseeram v. Manohar Doss*, 2 Ind. Jur., N. S., 241, that the account between the plaintiffs and the defendant was a mutual, current, and open account within the meaning of cl. 87, and that the suit was not barred. Literally construed, cl. 87 would apply only to those cases in which both parties have in the course of their dealings made actual demands on one another. The more reasonable and more probable intention of the framers of the clause appears to have been that it should apply to cases where the course of business has been of such a nature as to give rise to reciprocal demands between the parties; in other words, where the dealings between the parties are such that sometimes the balance may be in favour of one party and sometimes of the other. **NARRANDAS HEMRAJ v. VISSANDAS HEMRAJ** [I. L. R., 6 Bom., 134]

14. ———— Limitation Act, 1877, s. 19—Acknowledgment of debt contained in unregistered document—Admissibility of document as evidence of acknowledgment.—The nature of the pecuniary transactions between B and G were such that sometimes a balance was due to the one and sometimes to the other. On the 1st October 1875 there was a balance due to B. During the ensuing year, as computed in the account, G made payments to B.

LIMITATION ACT, 1877—continued

a lessee for the refund of rent paid to the wrongful heir of the deceased lessor, the cause of action as against the wrong doers dates from the time when they were declared by a competent Court to have paid to a party, without title, and the cause of action as against the lessee dates from the time when the surety was made to pay the rent to the rightful heir on default of the lessee **ROY HURER KISHEN v ASMEKH KOONWAR . . . W. R., 1864, 57**

— art 82 (1871, art 83)—*Suit for contribution—Cause of action*—A surety who had discharged the amount of a bill guaranteed by him and another as co-surety sued his co-surety for contribution. *Held* that, the cause of action in the suit being the right to contribution, that right accrued, not when the bill in question was dishonoured, but when the surety took it up and paid it. **CONSTANTINE v DREW I N W, Pt. II, p 42. Ed. 1873, 100**

— art. 83 (1871, art. 84)

1 ——— *Contract of indemnity*—In 1864 a lease of a house was granted to A for a term of ten years. The lease contained a covenant

representative of the lessor, sued B for arrears of rent and damages for non repair. B defended the suit, but C obtained a decree against him for Rs. 167-3 and costs, amounting in all to Rs. 328 3. His own costs amounted to Rs. 1491 1. In 1876 B paid C the Rs. 328 6. In 1877 B sued the plaintiff for the amount which he had been compelled to pay C and

LIMITATION ACT, 1877—continued

25th October 1879 and subsequently. *Held* that the law of limitation applicable to the set off was art 83, sch. II of the Limitation Act, that limitation would run from the time when the plain-

— art 84 (1871, art. 85)

1 ——— *Act XIV of 1859, s 1, cl 9*
— *Beng Reg XX of 1812, s 5—Suit for fees*

which the defendants had agreed to pay the fees

10 W. R., 223

2. ——— *Suit for pleader's fees not under written contract*—A suit for pleader's fees upon a vakalatnama which is in the form of a mere power of attorney, and is not a written contract, is barred by limitation if not brought within three years. In the absence of evidence of any express agreement as to when the fees are to be paid, the implied agreement must be taken to be for payment at the time when the case is decided. **KASHINATH ROY CHOWDHRY v ISSUR CHUNDER MOOKERJEE**

[5 W. R., 297

DWARANATH MOITRO v KENNY

[5 W. R., 5 C. C. Ref., 1

CARRUTHERS v MENZIES . . .

Cor., 40

3 ——— *Act XIV of 1859, s 1 cl 9*
and 10—*Suit by vakil for fees—Cause of action.*
—The defendants retained the plaintiff as their

until decree, which was made in September 1864. The present suit was instituted in December 1866. *Held*, reversing the decree of the lower Appellate Court, that as there was no special agreement, the plaintiff's right of suit did not arise until he had completely discharged his duty in the conduct of the suit, which he had done in 1864. Consequently, the present suit, having been brought within three years from that date, was not barred. **BRICKPAT-NAM THATHACHARLU v KAJAMIYA . 6 Mad, 265**

4. ——— *"Suit"—Attorney and client—Taxation of bill of costs—Application by*

2 ——— *Contract of indemnity*—

Defendants claimed a set off as damages for loss incurred by the plaintiff's failure to supply all the wood contracted for, such loss having arisen on the

LIMITATION ACT, 1877—continued.

for an account and that limitation ran from the date on which the agency ceased. **HIRBINATH ROY v. KRISHNA CHOWAN BAKSHI**

[L. R., 13 I. A., 123; I. L. R., 14 Calc., 147

4. ———— *Principal and agent—Suit by principal for an account—Effect of a decree for an account, as distinguished from a decree made upon the pleading.*—A continued agency, or employment as drawn for the purpose of drawing and expending the money of a principal, resulted in a suit by the latter, who alleged that more had been drawn than expended for him, and that a specific sum, or balance, stood against the defendant, having been misappropriated by him. The principal claimed also any further sum that might be proved to be payable. *Held* that in such a suit limitation, which was governed by art. 90 of Act IX of 1871, commenced from the date on which the agency ceased. **HIRBINATH RAY v. KRISHNA KUMAR BAKSHI**

[I. L. R., 14 Calc., 147
L. R., 13 I. A., 123

5. ———— *Suit by principal against agent to recover money received and not accounted for—Termination of agency—Act IX of 1872 (Contract Act), ss. 201, 218.*—Where an agent for the sale of goods receives the price thereof, the agency does not terminate, with reference to ss. 201 and 218 of the Contract Act (IX of 1872), until he has paid the price to the principal; and a demand made by the principal for an account of the price is made "during the continuance of the agency" within the meaning of sch. II, art. 89, of the Limitation Act (XV of 1877): and a suit by the principal to recover the price is therefore within time if brought within three years from the date of such demand. The agency does not terminate immediately on the sale of the goods. It does not terminate at the time when the plaintiff obtained knowledge of the defendant's breach of duty. **BAHU RAM v. RAM DAYAL**

[I. L. R., 12 All., 541

6. ———— *Suit by principal against agent for money received and unaccounted for—Termination of agency.*—In a suit, brought in 1893, for the price of piece-goods sold for the plaintiff by the defendants as his agents, the defendants showed that the sale of the goods was completed in 1894, but the evidence showed their admission of an open account between the parties. *Held* that the defendants were liable to the plaintiff as agents until they had accounted to him, and therefore his claim as to the piece-goods was not barred. **Babu Ram v. Ram Dayal**. I. L. R., 12 All., 541, followed. **FARR v. BRIDGES DASS**

I. L. R., 26 Calc., 715
[3 C. W. N., 524

——— art. 90 (1871, art. 91)—*Suits governed by.*—What suits are governed by art. 91 of the Limitation Act, 1871, pointed out. **TOMAS ALI v. MAHOMED AMEER HOSSEIN**

——— art. 91 (1871, art. 92).

See MALABAR LAW—JOINT FAMILY

[I. L. R., 15 Mad., 6

LIMITATION ACT, 1877—continued.

1. ———— *Suit to set aside sale-deed.*—A suit of the kind mentioned in this article was under Act XIV of 1859 governed by the six years' limitation. **THAKOOR PATIL v. RAM SORABH LAL**

2 N. W., 433

2. ———— *Application of art. 91.*—Art. 91, sch. II of the Limitation Act (XV of 1877), only applies to suits in which the decedent's estate to be set aside were intended to be operative against the plaintiff or his predecessor in title and would remain operative if not set aside. **Jagdish Chandra Choudhary v. Dabhiar Mohan Ray Choudhary**. I. L. R., 13 Calc., 518; I. L. R., 13 I. A., 54; **Janki Dattar v. Ajit Singh**, I. L. R., 15 Cal., 58; I. L. R., 14 I. A., 145; **Raghuvar Dayal Sain v. Bhikaj Lal Meher**, I. L. R., 12 Calc., 69; and **Mahabir Pershad Singh v. Kharib Pershad Narain Singh**, I. L. R., 19 Cal., 629, distinguished. **SHAW LAL MITRA v. AMARENDRO NATH BOSE** I. L. R., 23 Calc., 480

3. ———— *Grant by zamindar of estate for maintenance—Lease by grantee in excess of his estate—Suit for possession after death of grantee.*—A grant of a village for maintenance was made by a zamindar to his nephew operating only for life. The grantee survived the grantor, and by *ikhar-nama* acknowledged the preceding zamindar to be entitled to the village. The grantee had, however, already executed a *pottah* described therein as permanent to a lessee. The latter obtained possession, and from him after the death of the original grantee for life the zamindars who succeeded the grantor accepted rent at the rate stipulated in the *pottah* and did not disturb his possession. In a suit after the death of the lessee claiming the village as part of the inherited zamindari the defence was that the lease was perpetual, but it was held that it was void as against the successor of the grantor and not merely voidable after the grantee's death. *Held* that the suit for possession was not barred under art. 91 of the Limitation Act (XV of 1877) on the ground that a decree declaratory of title to have the *pottah* cancelled might have been sued for in the lessee's lifetime under s. 39 of the Specific Relief Act, 1877. **BENI PRDSHAD ROY v. DUDHATA ROY**

[I. L. R., 27 Calc., 158
L. R., 26 I. A., 216
4 C. W. N., 274

4. ———— *Suit to cancel instrument.*—E, to whom B had given a usufructuary mortgage of certain land, promising to put him in possession, sued B for the mortgage-money, B having failed to put him in possession. This suit was instituted on the 22nd November 1875. On the 25th of the same month, E, learning that B was about to dispose of his property, caused a notice to issue to him directing him not to transfer any of his property. This notice was served on B on the 29th November. On the 1st December 1875 B transferred certain land to T by way of sale. His suit was dismissed by the lower Courts, but the High Court, on the 7th August 1876, gave him a decree. Certain property belonging to B was sold in execution of this decree, but the sale proceeds were not sufficient

LIMITATION ACT, 1877—continued

exceeding such balance. On the 1st November 1876 a balance of Rs 500 was found to be due from G to B. On the 11th December 1876 G executed a conveyance of certain land to B for which such debt was partly the consideration. In such conveyance G acknowledged his liability in respect of such debt

by limitation and that in the period each item of such debt would not have been barred when such acknowledgment was made as the debt with which the year computed from the 1st October 1875 opened was extinguished by payments made by G in the course of that year. **KHUSHALO v BHABH LAL**

[I L R., 3 All., 523]

15 ————— *Mutual current accounts*

showed reciprocal demands between plaintiff and

16 ————— *Mutual open and current*

settled was drawn up and signed by B and C in which they denied that any balance would be found

that the accounts were mutual open and current accounts and that the suit was not barred by limitation. **SITAYYA v RANGAREDDI**

[I L R., 10 Mad., 259]

17 ————— *Mutual account—Test of mutuality—Shifting balance*—The dealings between the plaintiff and defendant consisted of loans from one to the other. Interest was charged on such loans

LIMITATION ACT, 1877—continued

open and current account within the meaning of art 85 of the Limitation Act (XV of 1877) and that the suit was not barred by limitation. The fact that

merely creating obligations on one side and the other side being merely discharges of those obligations. **GANESH v GTANU**

[I L R., 22 Bom., 606]

————— art 86 (1871, art 88)—*Suit to*

————— art 89 (1871, art 90)

1 ————— *Cause of action—Balance of account*—The representatives of a gomasta who had for the last four years of his life taken the moneys of his employers in advance for the purpose of the business were sued for the balance of account of such moneys after giving credit for the amount of

KRISHNA PAUL CHOWDHRY v JAGATTARA

[2 B L R., A C, 139 11 W R., 76]

Reversing on appeal **KALEE KRISHN PAUL CHOWDHRY v JUGUT TARA**

9 W R., 334

See **RADHANATH DUTT v GOBIND CHUNDER CHATTOPJEE**

4 W R., S C C Ref., 19

2 ————— *Suit against agent for an account—Mooktear*—An account of his receipts and disbursements having been demanded from a mooktear he on the 3rd of August 1872 wrote a letter in which he promised to render full accounts during the ensuing vacatur. This he neglected though he did not refuse to do. Held that the limitation for a suit to compel an adjustment of account ran from the time when the defendant's promise to render accounts was broken and was governed by Act IX of 1871 sch II art 90 (See Act XV of 1877 sch II art 89) **HORI NARAIN GOSWAMI v ADMINISTRATOR GENERAL OF BENGAL**

[3 C L R., 448]

3 ————— *Suit for an account between principal and agent*—Where a plaintiff alleged a continued agency in the defendant and prayed for relief on the ground that there was a specific balance against him and prayed for the recovery of such sum or any larger sum that might be proved to be payable, Held that such suit was essentially one

LIMITATION ACT, 1877—continued.

cancellation of a bond or other instrument. *Sikher Chand v. Dulputty Singh, I. L. R., 5 Cal., 363*, followed. *BOO JINATHOO v. SHANAGARYALAB KANJI* [I. L. R., 11 Bom., 78]

12. ————— *Suit to set aside deed—Fraud.*—In a suit instituted in 1884 by a husband and wife to have a deed, granting land, which was executed by the husband in 1872, set aside on the ground that it had been obtained from the latter by fraud and undue influence, the facts relied upon were known to the husband from the date of the deed. Although in another suit a sale by the husband effected in 1870 was set aside in 1882 on the ground of his having been unduly influenced, he was not at the time of the previous transaction, nor for some years after it, mentally incompetent or unable to allow that knowledge to operate on his mind. *Held* that therefore the suit falling within s. 91 of sch. II of Act XV of 1877 was not maintainable by either of the plaintiffs. *JANKI KYSWAN v. AJIT SINGH*. I. L. R., 15 Cal., 58 [I. L. R., 14 I. A., 148]

13. ————— *Mahomedan law—Gift—Suit by heir for share of donor's property by declaration of invalidity of gift.*—A Mahomedan, who in October 1875 executed a deed of gift of his property, under which possession was taken by the donees, died in June 1885, never having taken any steps to have the deed of gift set aside. In February 1886, a suit was brought by his nephew claiming a share in the donor's estate by right of inheritance, and by having it declared that the deed was procured from the donor by fraud and undue influence. It was found that the plaintiff was aware of the existence of the deed soon after its execution, and that, if there were any facts entitling him to have it cancelled, those facts were known to him more than three years before the institution of the suit. *Held* that the plaintiff had, during the donor's lifetime, no reversionary or vested interest in the estate, but a mere possibility of inheritance, and consequently the donor, when he executed the deed, had full disposing power over his property, and the right which at his death accrued to the plaintiff came to the latter affected by the donor's acts and dispositions; and that as a suit by the donor to set aside the deed would at the time of his death be barred by art. 91 of the Limitation Act (XV of 1877), such a suit was also barred against the plaintiff, who obtained through him the cancellation of the deed, being a substantial and necessary incident of the claim, and the necessity which rested upon the plaintiff for obtaining such cancellation before he could dislodge the donees, not being obviated by his choosing to call the suit one for possession of immovable property. *Abdul Wahab Khan v. Nuran Bibee, L. R., 12 I. A., 91*, and *Jagadamba Chaudhrain v. Dakhina Mohan, L. R., 13 I. A., 84*, referred to. *HASAN ALI v. NAZO* [I. L. R., 11 All., 456]

14. ————— and art. 120—*Suit for declaration of title—Incidental relief—Setting aside instrument.*—The period of limitation for suits to declare title is six years from the date when the

LIMITATION ACT, 1877—continued.

right accrued, under the Limitation Act, 1877, sch. II, art. 120; and this period is not affected by art. 91, though the effect of the declaration is to set aside an instrument as against the plaintiff. *PACHAMUTHA v. CHINNAPPAN*. I. L. R., 10 Mad., 213

15. ————— *Will—Suit to contest validity of will.*—Art. 91 of sch. II of the Limitation Act of 1877 is not applicable to wills. *SAJID ALI v. IBAD ALI*. I. L. R., 23 Cal., 1 [I. L. R., 22 I. A., 171]

16. ————— *Suit to declare document of no effect.*—A suit for a declaration that a document "was executed for nominal purposes and was not intended to take effect" is not a suit to cancel a document within the meaning of art. 91 of sch. II of the Limitation Act. *NAGATHAL v. PONTSAMU* [I. L. R., 13 Mad., 44]

17. ————— and arts. 92, 93—*Suit where the cancellation of a fraudulent instrument is ancillary to the main relief.*—Arts. 91, 92, and 93 of sch. II of the Limitation Act (XV of 1877) apply only to suits brought expressly to cancel, set aside, or declare the forgery of an instrument; but they do not apply to suits where substantial relief is prayed, and where the cancellation or declaration is merely ancillary and not necessary to the granting of such relief. *ABDUL RAHIM v. KIRPARAM DAJI* [I. L. R., 16 Bom., 186]

18. ————— and arts. 92, 93, 144—*Instrument, Suit to set aside or declare the forgery of—Immovable property, Suit for possession of.*—One D died in 1849 leaving an ikarnamah or will. His widows entered into possession of his property and the survivor died on the 23rd April 1886. The predecessors in estate of the plaintiffs brought a suit to set aside the ikarnamah, which suit was dismissed in 1864 on the ground that they had no cause of action during the lifetime of the surviving widow. On the 29th June 1889, the plaintiffs, as the heirs of D after the death of the surviving widow, instituted a suit to recover possession of the property of D from the defendants, who claimed to have come into possession thereof under the ikarnamah upon the death of the widow. *Held* that the suit was governed by the limitation of three years for a suit to set aside an instrument, and not by the general limitation prescribed for suits to recover immovable property, as after the widow's death the parties in possession were those claiming under the ikarnamah, who could not be displaced except by setting it aside. *Raghubar Dyal Sahu v. Bhikya Lal Misser, I. L. R., 12 Cal., 69*, approved. *Jagadamba Chaudhrani v. Dakhina Mohan Roy Chaudhri, I. L. R., 13 Cal., 308*; *L. R., 13 I. A., 84*, and *Jenki Kunwar v. Ajit Singh, I. L. R., 15 Cal., 58*; *L. R., 14 I. A., 148*, referred to. *MAHADEV PERSHAD SINGH v. HURRIHUR PERSHAD NARAIN SINGH* I. L. R., 19 Cal., 629

19. ————— and art. 144—*Cancellation of instrument.*—A suit was filed in 1888 on behalf of a Malabar tarwad by two of its members to recover property improperly alienated in 1879 under a kanom instrument by the karnavan, who had since been removed from office. *Held* that since

LIMITATION ACT, 1877—continued

"K there to cancel the instrument that it was

Held that the words in art. 31 sub 11, Act XV of 1877, "when the facts entitle the plaintiff to have the instrument cancelled or set aside became known to him" must be construed to mean "when, having knowledge of such facts a cause of action has accrued to him and he is in a position to maintain a suit" and consequently the period of limitation for K's suit began to run, not merely when he had knowledge of the fraudulent character of the conveyance to T but when, having such knowledge it had become apparent to him that there was no other pro

5. ——— and art. 114—*Suit to cancel instrument—Suit for the rescission of a contract—Time from which limitation runs—Equitable estoppel—B, P, and G sued to cancel a lease of certain land on the ground that the lessor was not competent to grant the same, the defendants*

thereof, that under these circumstances the plain-

ring to the rescission of contracts as between pro-

6. ——— *Suit for cancellation of instrument—Mahomedan law—Gift—Suit for possession of immoveable property—One of the heirs of a deceased Mahomedan sued for her share under the Mahomedan law of the estate of the deceased, and to set aside a gift of his estate by the deceased as invalid under that law, by reason that possession of the property transferred by the gift had not been delivered by the donor to the donee. Held that, because the suit was not brought within three years from the date of the gift it did not*

LIMITATION ACT, 1877—continued

need surely follow that the suit was barred by

7. ——— *Suit for cancellation of instrument—Specific Relief Act (I of 1877) s. 39*

aside of an instrument to which the limitation in No 91, sch II of the Limitation Act 1877, would apply (which relates to suits of the nature of those referred to in s 39 of the Specific Relief Act) but rather one for a declaratory decree. *BOBBA PANDAY v SARODRA BISHI* I L R, 5 All, 322

8. ——— and art 141—*Suit to*

governed by art 31 sub 11 of the Limitation Act 1877. *Stikhar Chand v Dulpaty Singh* I L R, 6 Cal 363 distinguished. *Hazari Lal v JADAVN SINGH* I L R, 5 All, 78

9. ——— *Suit to set aside fraudulent deed—Minority—Fraud—Where a deed of*

10. ——— and art 95—*Suit to set aside deed of partition on ground of fraud—*

11. ——— *Suit to set aside an instru-*

LIMITATION ACT, 1877—continued.

[U. I. R., 4 Calc., 203
S. C. L. R., 573]

[U. L. R., 24 Calc., 1
L. R., 23 I. A., 87

P. L. R., 11 Bom., 708

[I. L. R., 16 Bom., 1

[1 B. L. R., A. C., 77:10 W. R., 104

[6 B. L. R., 530
14 Moore's L. A., 1

15 W. R., P. C., 24

3. ~~Impounded by the Department of the Interior~~ Act XIV of 1859, s. 10—

4. ----- *Extension of time on account of fraud.*—Art. 95, sec. II of the Limitation Law, provides a period of limitation in extension of the period which, in the absence of fraudulent concealment, would, under some other article, apply to a suit, and not a period less than that which under ordinary circumstances would be allowed for a suit of the same nature. **OPENDER NARAIN MOOKERJEE v. GERADINE DEY** 25 W. R., 478

[I. L. R., 3 Cal., 504; 2 C. L. R., 147]

6. ——— Suit to set aside decree obtained by fraud—Suit against express trustee.—Certain of the grantees of lands, granted for the maintenance of the grantees and the support of a mosque and other religious purposes, sued for the removal of the superintendent of the property from his office. The parties to this suit entered into a compromise, which made certain arrangements for the management of the property, and a decree was made in accordance with the compromise. The grantees who were not parties to this suit then sued.

LIMITATION ACT, 1877—continued

a prayer for the cancellation of the kanoon instrument was not an essential part of the plaintiffs relief the suit was not barred by the three years rule in Limitation Act 1877 sch II art 91 *UNNI v KUCHHI AMMAL* I L R., 14 Mad., 23

20 ———— *Suit to set aside alienation by de facto manager of Hindu endowment*—The possession of the manager of a Hindu endowment cannot be treated as adverse to the endowment *Semle*—Art 91 of sch II of the Limitation Act (XV of 1877) has no application to a suit to set aside

21 ———— and art. 144—*Suit by*

22 ———— and art. 144—*Suit for*

possession since 1800, the conveyance of the land from one of the plaintiffs It was had no effect

23 ———— and art 144—*Suit to recover lands of which defendant had been in*

prayed that it might be cancelled and contended (*inter alia*) that the suit was barred by

LIMITATION ACT, 1877—continued.

Limitation and pleaded adverse possession. *Held* that the suit was not barred and that the plaintiffs were entitled to recover—(1) supposing the deed not to have been executed at all the possession of the manager would not become adverse until he distinctly

11 Bom., 755

art 92 (1871, art. 93)

1 ———— *Suit to set aside will—Fraud—Cause of action*—Where no fraud is alleged the three years limitation in cl 93 of the second schedule to the Limitation Act of 1871 will run from any attempt to enforce the instrument,

was a forgery, but an order was made that the

sch II cl 93 FAKHARUDDIN MAHOMED AHSEN v. OFFICIAL TRUSTEE OF BENGAL

[I L R., 8 Cal., 178
10 C L R., 178
L R., 8 I A., 197

Affirming on appeal the decision of the High Court where it was held that a suit to declare the forgery of an instrument issued or registered or attempted to be enforced is required by art 93 of sch II, Act IX of 1871, to be brought within

LIMITATION ACT, 1877—continued.

limited by s. 33 of Act XI of 1859 and art. 14 of the second schedule to Act IX of 1871 for a suit to set aside the sale had expired. The article which applies to such a suit is art. 95 of the latter Act. **MOOVEN CHENDER MEN v. RAM SOONDER SURMA MOOZOMDAR** . . . **I. L. R., 3 Calc., 300**

12. ———— Suit to set aside fraudulent revenue sale.—Suit to set aside a sale of land, sold as if for arrears of revenue under Act II of 1864 (Madras) on the ground of fraud, and to recover possession of the land from the purchaser, who was alleged to be party to the fraud. *Held* that the suit was governed by art. 95 of sch. II of the Limitation Act, 1877. **VENKATAPATHI v. SUBRAMANYA** . . . **I. L. R., 9 Mad., 457**

13. ———— Revenue Recovery Act (Madras)—Mad. Act II of 1864, s. 59—Suit to set aside a sale for arrears of revenue—Fraud.—In a suit, in July 1885, to set aside a sale of land of the plaintiff, made in July 1881 as if for arrears of revenue under Act II of 1864 (Madras), on the ground that the sale had been brought about by fraud and collusion between the purchaser and the village officers, it was found the plaintiff had knowledge of the alleged fraud more than six months before suit. *Held* that the law of limitation applicable to the case was s. 59 of Act II of 1864, and not s. 95 of the Limitation Act, and that the suit was therefore barred. **Venkatapathi v. Subramanya, I. L. R., 9 Mad., 457**, explained. **Baij Nath Sahu v. Lala Sital Prasad, 2 B. L. R., F. B., 1**, and **Lala Mobaruk Lal v. Secretary of State for India, I. L. R., 11 Calc., 200**, considered. **VENKATA v. CHINGADU** [**I. L. R., 12 Mad., 168**

and arts. 12 and 144—

14. ———— Sale for arrears of revenue—Suit for possession of land—Fraud.—The plaintiff's land was sold by the Revenue authorities for arrears of assessment due to the inamdar. The plaintiff applied to the Mamlatdar to have the sale set aside on the ground of fraud on the part of the inamdar, but his application was rejected; and the sale was confirmed in July 1879. The auction-purchaser was thereupon put in possession. In 1886 the plaintiff sued to recover possession of the land in question. *Held* that the suit, having been brought more than one year after the date of the sale, was barred by art. 12, cls. (b) and (c), of sch. II of the Limitation Act (XV of 1877). The sale was one in pursuance of an order of the Collector or other officer of revenue, and, if not for arrears of Government revenue, was at any rate a sale for arrears of rent recoverable as arrears of revenue. The plaintiff as occupant of the land was bound by the sale, unless and until it was reversed, and the title of the purchaser at the sale was a perfectly good title until the sale was set aside in due course of law. *Held* also that the plaintiff's allegation, that the sale took place in consequence of the fraud of the inamdar, would make not art. 144, but art. 95, applicable to the case. **BALAJI KRISHNA v. PIRCHAND BUDHABAM** [**I. L. R., 13 Bom., 221**

15. ———— and art. 96—Suit for money paid under Land Acquisition Act—Fraud or mistake, Knowledge of.—In 1876 *K* sued *M* on a

LIMITATION ACT, 1877—continued.

bond, dated 25th December 1869, for Rs. 5,000, by which certain land in the district of South Tanjore was hypothecated as security for the debt, and obtained a decree on the 6th of April 1876 for the sale of the lands, which he purchased on the 17th August 1876 for Rs. 6,000. *K* then discovered that part of the land hypothecated, situated within the jurisdiction of the subordinate Court at Kumbakonam, had been acquired by a railway company under the Land Acquisition Act in 1874, and that the compensation, Rs. 460 (claimed by *M*'s mother, who sold the land to the company), was lodged in the treasury of Kumbakonam in the name of *M*'s mother. *K* having applied to the subordinate Court for an order for payment out of this sum, the Court, by order dated 25th February 1880, directed that the question of title to the money should be decided by suit. *K* then sued *M* as the sole heir of his deceased mother in the District Munsif's Court of Tiruvadi (where *M* resided) for a declaration of right to, and to recover, the said sum of Rs. 460. The suit was filed on the 4th September 1880. On the 16th April 1880, *M* assigned his interest in the money sued for to *V*, who was made defendant in the suit on his own application and pleaded that the suit was barred by limitation, inasmuch as more than three years had elapsed since the money was paid by the railway company. *Held* that the suit was not barred by limitation, as the compensation was awarded to *M*'s mother either through fraud on her part or mistake on the part of the Collector, and *K* did not become aware of the fraud or mistake until within six years of the suit (arts. 95, 96 of sch. II of the Limitation Act). **VENKATA VIRABAGAVATYANGAR v. KRISHNASAMI ATYANGAR** [**I. L. R., 6 Mad., 344**

16. ———— and art. 96—Partition to detriment of minor—Suit by minor on attaining majority to recover his full share—Mistake in making partition.—Certain members of a joint Hindu family partitioned the family property among them in such a way as to give one member of the family, who at the time of the partition was a minor, less than the share to which he was entitled. The minor was represented in the partition by his uncle, though the uncle was not the natural guardian of the minor, nor in any other way entitled to deal with the minor's property. The minor on attaining majority brought a suit for recovery of the full share to which he was entitled. *Held* that this was not a suit for relief on the ground of fraud or mistake, inasmuch as the partition could not under the circumstances affect in any way the rights of the minor. The suit was therefore not subject to the limitation of three years prescribed by arts. 95 and 96 of the sch. II of Act XV of 1877. **LAL BAHADUR SINGH v. SISPAL SINGH**

[**I. L. R., 14 All., 498**

— art. 96 (1871, art. 97)—*Beng. Act VIII of 1869, s. 27—Suit for money paid in excess of road cess.*—In a suit to recover money alleged to have been paid by the plaintiffs to the defendants in excess of the sum demandable by the latter from the former on account of road cess, —*Held* (reversing the decisions of the Courts below) that the suit was governed not by the special law of limitation contained in

LIMITATION ACT, 1877—continued.

the grantees who were to set aside the compromise

7. ———— *Suit to set aside sale on the ground of fraud*—A suit to set aside an execution-sale on the ground that the decree was obtained by fraud is maintainable and is governed by art. 95 of the Limitation Act. **MOTI LAL CHAKRABUTTY v. RUSSICK CHANDRA BAIKRAI**

[I. L. R., 26 Calc., 326 note
3 C. W. N., 395]

See **BRONOV MOHUN PAL v. NUNDA LAL DEY**

[I. L. R., 26 Calc., 324; 3 C. W. N., 399]

which places such an application under art. 178 of the Limitation Act.

8. ———— and arts 12 and 144—

Z executed another deed of mortgage to J, part of the consideration whereof was the cancellation of

applicable to the case was not that contained in art 12, nor in art 144, but that contained in art 95 of sch II of the Limitation Act, inasmuch as fraud vitiates all things, and prevents the application of any other law of limitation than that specially provided for relief from its consequences.

LIMITATION ACT, 1877—continued.

alleged by them, lay upon the defendants. **NATHA SINGH v. JODHA SINGH** I. L. R., 6 All., 406

9. ———— and art 12—*Suit by*

forged by J. The suit was brought on the 28th January 1878, and the plaintiff prayed that the sale might be cancelled, having been made in order to defeat his rights, that he might be declared the heir of O T, and that possession of the property with mesne profits might be awarded to him. The lower

10. ———— and arts. 63 and 64—*Suit on indemnity bond—Fraud—Cause of action—On*

against fraud. **SHAPURJI JAHANGIRJI v. SUPERINTENDENT OF THE POONA CITY JAIL** 12 Bom., 238

11. ———— *Fraud—Sale for arrears of revenue—Act XI of 1859, s 33—Act IX of 1871, sch. II, art. 14.*—When one of several co-sharers

LIMITATION ACT, 1877—continued.

payment is actually made to the decree-holder.
RADHA KRISTO BALO v. RUP CHUNDER NUNDY
 [3 C. L. R., 480

2. ——— Suit for contribution—Joint liability under decree.—*Quære*—Whether, in a suit for contribution on the ground that the plaintiff and defendants were jointly liable under a decree, in execution of which the plaintiff's property alone was sold, the limitation prescribed by art. 100, sch. II of Act IX of 1871, is applicable, or that prescribed by art. 118, sch. II of the same Act.
FUCKORUDDEN MAHOMED AHSAN v. MOHIMA CHUNDER CHOWDHRY . . . **I. L. R., 4 Calc., 529**

The period of limitation for suits mentioned in the second part of this article, *viz.*, suit by a sharer in a joint estate who has paid the whole revenue, was also six years under the Act of 1859. **SHADEE LAL v. BHAWANEE** . . . **2 N. W., 52**

CHOHAGUR v. THAKOOREE SINGH . **1 Agra, 123**

And the cause of action in such a suit was held to arise from the same time as is now expressly enacted.
BUNWAREE MOHUN SAHA v. PRANNATH SAHA

[2 W. R., 159

KALLY SUNKUR SUNDYAL v. HURO SUNKUR SUNDYAL
 [7 W. R., 29

3. ——— and art. 132—Payment of entire rent by a co-tenant—Suit for contribution.—One of two persons having a joint holding from a mittadar paid the whole of the mittadar's dues for one year, and more than three years after the date of payment he sued the other for contribution. *Held* the payment did not create a charge on the land, and art. 132 of the Limitation Act was therefore not applicable, and the suit was consequently barred by limitation under art. 99. **THANIKACHELLA v. SHUDACHELLA** . . . **I. L. R., 15 Mad., 258**

4. ——— and art. 132—Suit to recover assessment paid by a co-owner of property from other co-owners—Charge on share of co-sharer.—In 1868, the uncle of the plaintiff brought a suit (No. 176 of 1868) against five members of the undivided family, to which the defendants in the present suit belonged, and obtained a money-decree. In execution of that decree, he attached and sold certain land, in which all the members of the defendants' family were interested. At the sale he purchased the land himself, and was put into possession. In 1873, he began to pay the assessment upon the whole property. Subsequent litigation took place between him and the defendants' family, pending which the plaintiff separated from his uncle, and obtained the property in question as his share. The result of that litigation was a decree by the High Court, on the 23rd September 1879, declaring that the plaintiffs' uncle was only entitled to the interest of the five members of the family who had been defendant in his suit (No. 176 of 1868) in execution of the decree in which the property had been sold. The plaintiff brought the present suit, in 1883, against the other members of the family to recover their proportionate share of the assessment for the years 1875—1878, during which period he had paid the

LIMITATION ACT, 1877—continued.

whole assessment. He prayed for a sale of their interest in the land. Both the lower Courts held that the payment of assessment did not create a charge on the property, and that the plaintiff having omitted to sue within three years from the date of the payments made by him, the present suit was barred. On appeal by the plaintiff to the High Court, *Held*, confirming the lower Court's decree, that the suit was barred. The plaintiff paid the assessment as full owner of the property, and it was entirely by his own action that the defendants had been excluded from the property, and did not pay their quotas of the assessment. Under these circumstances, the payments could not be regarded as salvage payments so as to make them a charge, according to equity, justice, and good conscience, upon the shares of the other co-owners. **ACHUT BAMCHANDRA PAI v. HARI KANTI** . . . **I. L. R., 11 Bom., 313**

5. ——— and art. 132—Government revenue, Suit to recover money paid on account of—Charge on immovable property—Co-sharer, Payment of arrears of revenue by.—The plaintiffs and defendants were the proprietors of two separate plots of lands, separately assessed with Government revenue, but covered by the same tozmi number. Plaintiffs paid the Government revenue due from the defendants in respect of their plot from September 1873 to June 1885 in order to prevent the two plots being brought to sale, and on the 23th September 1885 instituted a suit to recover the amount. It was contended on behalf of the plaintiff that art. 132 of sch. II of Act XV of 1877 applied to the facts of the case, and that the plaintiffs were therefore entitled to recover all amounts so paid within twelve years of date of suit. *Held* that, as on the authority of *Kinn Ram Doss v. Muzaffer Hosain Shaha*, **I. L. R., 14 Calc. 809**, the plaintiffs had no charge upon the property in respect of which the payment had been made, and as on the authority of *Ramdin v. Kalka Pershad*, **L. R., 12 I. A. 12**; **I. L. R., 7 All., 502**, art. 132 only applied to cases where the money sought to be recovered is a charge upon the property, the limitation applicable to the case was that provided by art. 99, and the plaintiffs' claim in respect of all payments made more than three years before suit was barred. **KHUN LAZ SAHU v. PODMANUND SINGH**

[**I. L. R., 15 Calc., 542**

——— art. 102.

Suits for wages other than those specified in cl. 2 of s. 1 of Act XIV of 1859 were governed by cl. 9 or 10 of that Act. **JUMNA PERSHAD v. BHEEM SEN**
 [**1 Agra, Mis., 8**

NITTO GOPAL GHOSE v. MACKINTOSH

[**6 W. R., Civ. Ref., 11**

——— Suit for wages—Cause of action, Accrual of.—Wages due to an employé leaving his employer's service would be due on the date when he left the service, and any suit for those wages must, in the absence of any subsequent account stated and settled between the parties, be brought within three years from such date. **YOUNG v. MACCORKINDALE**

[**10 W. R., 159**

LIMITATION ACT, 1877—continued

s. 27, Bengal Act VII of 1869 but by art 96 sch. II of the Limitation Act (XV of 1877) **MATHURA NATH KUNDU v STEEL** I L R, 12 Calc, 533

— art 97 (1871, art 99)

obtained a decree for specific performance against the vendor and the purchaser at the resale. On appeal by the purchaser at the resale this decree was reversed on the 29th August 1865. *Held* that the

barred by limitation under the provisions of Act IX of 1871 second schedule 93 **RAMPHAL LAL v JAFIR ALI** 7 N W, 189

3. ——— and art. 62—*Suit to recover purchase money where purchaser was unable to obtain possession—Failure of consideration money paid—Money had and received—A sale which a member of a joint family (Mithila) had*

art 62 of sch II of Act XV of 1877. But it failed at all events when the purchaser being opposed found himself unable to obtain possession. He would have had a right to sue at that time to recover his purchase money upon a failure of consideration. And therefore the case appeared to fall within art 97. It must fall either within that article or within art 62. **HANUMAN KAMAT v HANUMAN MANDUR** [I L R, 19 Calc, 123 I L R, 13 I A, 158]

4. ——— and art 62—*Suit to re*

LIMITATION ACT, 1877—continued.

less than three years from the date of the last mentioned decree to recover the sum paid by him to the defendant as above mentioned. *Held* that the suit was not barred by limitation. **VENKATANARASIMHULU v PERAMMA** I L R, 18 Mad, 173

5. ——— and art 64—*Retention of debt by debtor as part of consideration of another contract—Money due on an account stated which would as such have been barred in three years from the statement under Act XV of 1877 sch II, art 64, but comes for purposes of limitation within art 64 of another character when it having been the subject of an arrangement whereby it was to be retained by the debtor as part of the consideration upon a pro*

of the price but the parties failing to agree as to certain other terms a suit brought by the intending vendee for specific performance was dismissed on the ground that no effectual agreement had been made. *Held* that this decree brought about a new

BASSU KHAR v DHANU SINGH I L R, 11 All, 47

— art 93 (1871, art 93)—*Suit to recover money paid for tenure can stiel by als for arrears of rent—A suit to recover consideration money paid for a darpatri cancelled by the sale of the patti for arrears of rent was governed by the general rules of limitation under Act XIV of 1859* **JUDOOVATH BHUTACHARIJEE NOBO KRISTO MOOKERJEE** 3 W R, S C C Ref, 2

— art. 93 (1871, art. 100)

Under Act XIV of 1859 the period of limitation was six years for the suits mentioned in the first part of this article—viz suits by one who had paid the whole amount of a joint decree. **JUMELUN v WALLER AHMED** 10 W R, 31

DOORGAMONEE DOSSEE v DOORGA BHENJ [2 W R, 266]

NOBO KRISTO BRUNS v RAJBULLU BHENJ [3 W R, 134]

1. ——— *Suit for contribution—Cause of action—Under art 100 of sch II of Act IX of 1871 when a person has paid more than his own share of a joint decree limitation runs against a suit for contribution from the time that the excess*

LIMITATION ACT, 1877—continued.

claim was not a partnership demand. *MACCORKIN*
DALE v. YOUNG. 18 W. R., 466

S. C. affirmed on review. *YOUNG v. MACCORKIN-*
DALE. 19 W. R., 159

art. 107 (1871, art. 107).

Under Act XIV of 1859, six years was the period of limitation for the suits mentioned in this article (suits by the manager of a joint estate of an undivided family for contribution in respect of a payment made by him on account of the estate). As to the cause of action, the decisions were in accordance with this article.

See *RAM KRISHNA ROY v. MADAN GOPAL ROY*
[6 B. L. R., Ap., 103: 12 W. R., 194

BIMALA DEBI v. TARASUNDARI DEBI
[6 B. L. R., Ap., 101: 14 W. R., 480

Joint Hindu family—Debts of manager—Contribution, limitation in respect of, Suit for.—Where money is borrowed by the manager of a joint Hindu family on his personal security for purposes of necessity, his right to contribution arises when he expends the money, and limitation runs against his claim from that date and not from the date on which he repays the loan and releases his security. *Sunkur Pershad v. Goury Pershad*, I. L. R., 5 Calc., 321; *Ram Krishna Roy v. Madan Gopal Roy*, 6 B. L. R., Ap., 103: 12 W. R., 194, followed. *Aghore Nath Mukhopadhyaya v. Grish Chunder Mukhopadhyaya* I. L. R., 20 Calc., 18

art. 109 (1871, art. 109).

1. ———— *Act XIV of 1859, s. 1, cl. 16—Suits for mesne profits.*—Six years was the period of limitation for suits for mesne profits under cl. 16, s. 1 of Act XIV of 1859. *Lalla Gobind Suhate v. Munohur Misser*. 1 W. R., 65

RAM SURUN SINGH v. GOOROO DYAL SINGH
[1 W. R., 83

PRATAP CHANDRA BURUA v. SWARNAMAYI
[3 B. L. R., Ap., 81

ISSUREENUND DUTT JHA v. PARBUTTY CHURN JHA. 3 W. R., 13

RAMAPUT SINGH v. FURLONG. 3 W. R., 38

LUCHMUN SINGH v. MIRIAM. 5 W. R., 219

MUNEERAM ACHARJEE v. TURUNGO
[7 W. R., 173

BALUM BHUTT alias RAM BHUTH v. BHOOBUN LALL. 6 W. R., 78

NAWAB NAZIM OF BENGAL v. RAJ COOMAREE DEBEE. 6 W. R., 113

KATTAMA NACHIAH v. SUBBRABAMA AIYAN. ZAMINDAR OF SHIVAGUNGA v. SUBBRABAMA AIYAN
[4 Mad., 302

HUREEHUR MOOKERJEE v. MOLLAH ABDOLBUR
[17 W. R., 209

JUGGUT CHUNDER BHADOORY v. SHIB CHUNDER BHADOORY. 22 W. R., 255

LIMITATION ACT, 1877—continued.

See also *MODHOOSOODUN SANDYAL v. SUBROOP CHUNDER SINGAR CHOWDHRY*

[7 W. R., P. C., 73: 4 Moore's I. A., 431

2. ———— *Cause of action—Suit for mesne profits.*—In calculating the six years' mesne profits which the decree-holder was entitled to recover in this case, the cause of action was held to have arisen at the end of the year in which the ouster took place. *THAKOOR DOSS ACHARJEE CHUCKERBUTTY v. SHOSHEE BHOOSUN CHATTERJEE* 17 W. R., 208

RAM CHUNDRA ROY v. AMBIOA DOSSEA
[7 W. R., 161

3. ———— *Cause of action—Date of ascertainment of amount.*—Where the amount of mesne profits cannot be ascertained till after the end of the year, the cause of action was held not to arise until the end of the year. *BYJNATH PERSHAD v. BADIHO SINGH*. 10 W. R., 486

THAKOOR DASS ROY CHOWDHRY v. NOBIN KRISTO GHOSE. 22 W. R., 126

Or in cases of dispossession, the date of dispossession is the date when the cause of action arises in suits for mesne profits. *EKBAL ALI KHAN v. KALEE PERSHAD*. 3 W. R., 68

4. ———— *Mesne profits—Wrongdoers independent of the defendant—Civil Procedure Code (1882), s. 211.*—In a suit brought on the 26th September 1893 for mesne profits of land, for the possession of which a decree had been previously obtained against the defendant, the plaintiff claimed damages in respect of the Fusli years 1297-1300—the year 1297 F. ending on the 28th September 1890. The defendant objected (*inter alia*) that the claim in respect of the period beyond three years before the date of suit was barred by limitation, and that she was not liable for profits of the lands from which she had been dispossessed by others. Held (1) under art. 109, sch. II of the Limitation Act, the defendant was liable for the mesne profits received by her or which she might have with due diligence received during the three years before the date of suit, and not before. The period of three years fixed has no reference to the time when rents fall due. *Byjnath Persad v. Badho Singh*, 10 W. R., 486; *Thakoor Dass Acharjee Chuckerbuttery v. Shoshee Bhoosun Chatterjee*, 17 W. R., 208; and *Thakoor Dass Roy Chowdhry v. Nobin Kristo Ghose*, 22 W. R., 126, distinguished. (2) In the case of every wrong the liability of the defendant is limited to damages for the wrong which he has himself done. With reference to the definition of mesne profits in s. 211 of the Civil Procedure Code, if the defendant was excluded from possession, she could not be said to have actually or even impliedly received the profits, nor could she with ordinary or extraordinary diligence have received them; the case was remanded to determine what mesne profits were payable between the 26th September 1890 and the date, if any, when dispossession was proved. *ABBAS v. FASSIHUDDIN*

[I. L. R., 24 Calc., 413

5. ———— *Dispossession under decree subsequently reversed by Privy Council.*—Where

LIMITATION ACT, 1877—continued

Upholding on review *MACCORMICK v. LONDON*
[18 W. R. 466]

arts 103, 104 (1871, arts 103, 104)

These articles give the result of, and adopt the decisions under, the Act of 1859. As to prompt dower (art 103) *KHAJARANNISSA v. RISANNISSA BEGUM*
[5 B. L. R. 84, 13 W. R. 371]

MULLEKA v. JUMELA 11 B. L. R. 375
[L. R., I. A., Sup. Vol. 135]

KHAJARANNISSA v. SAIFULLA KHAN
[15 B. L. R. 306]

NATHU v. DAUD 2 Bom. 309; 2nd Ed. 292

S. C. DAUD v. NATHU 1 Ind. Jur. N. S. 113

1. Demand of portion of dower—*Cause of action*—Where a wife demanded only a portion of her dower or dower from her husband limitation as to her claim to the remainder will count from the date of her husband's death, and not from the date of her former demand *BEGOO JAUN v. GASHNE BEBEE* 6 W. R., Civ. Ref. 19

As to deferred dower (art 104) *MAHAB ALI v. AMANI* 2 B. L. R., A. C. 306

MEHRAN v. KUBIRAN 6 B. L. R. 60 note

KHAJARANNISSA v. RISANNISSA BEGUM
[5 B. L. R. 84; 13 W. R. 371]

MULLEKA v. JUMELA 11 B. L. R. 375
[L. R., I. A., Sup. Vol. 135]

2. Suit for dower—*Wrongful possession*—In a suit to recover the balance of dower—

NISSA 3 B. L. R., A. C. 176 note

MAHOMED FAZZ v. OOMDAH BEGUM 6 W. R., 111

WAFAH v. SANKEBA 8 W. R. 307

Unless it was sought to charge it on immovable property by establishing a lien thereon *JANEE KHANUM v. AMATOOOL FATIMA KHATOON*

[8 W. R. 51]

S. C. on appeal *WOOMATOOOL FATIMA BEGUM v. MEERUMUNNISSA KHANUM* 9 W. R., 315

WAFAH v. SANKEBA 8 W. R. 307

In the latter case—that is, where it is sought to make the dower a charge on immovable property—the suit would now probably come under art 183 of the Limitation Act.

8. Contract to hold money on loan—Repayment to be made by husband in case of

LIMITATION ACT, 1877—continued

place, or out of his assets at his death—*Held* that the Mahomedan law of dower was not applicable to the suit and that the period of limitation was three years from the date of the divorce or the death of the husband *ANONIMOUS CASE* 5 Mad. 280

art. 105 (1871, art 105)

Under the Act of 1859, the six years' period of limitation was applicable to suits of the nature described in this article (suits by a mortgagor after a mortgage is satisfied for surplus collections received by the mortgagee)

See LALL DOSS v. JAMAL ALI
[B. L. R., Sup. Vol., 901 9 W. R. 187]

art 106 (1871, art 106).

See CASES UNDER ART 120
[I. L. R., 4 AIL. 437]

To suits of the nature described in art 106 (suits for an account and share of the profits of a dissolved partnership) the six years' period of limitation applied under the Act of 1859 *JWALA PERSHAD v. KEDAR NATH* 3 Agra. 175

NURSINGH DOSS v. NARAIN DOSS 3 N. W. 217

BHUTOO RAM v. PUNUL CHOWDHRY 7 W. R. 36

KALEE KRISTO CHOWDHRY v. HARAN CHUNDER DEY 19 W. R. 217

Suit in nature of partnership demand—Plaintiff was in the service of the principal defendant (C) who was carrying on a partnership business with another as founders and engineers. During such service, plaintiff C, and a third party entered into a joint adventure or partnership with respect to the purchase, employment and

Plaintiff C and the third partner, forming his claim as if it were in the nature of a partnership demand. Held that on the 29th July 1868 when plaintiff

LIMITATION ACT, 1877—continued.

claim was not a partnership demand. **MACCORKIN DALE v. YOUNG**. 18 W. R., 466

S. C. affirmed on review. **YOUNG v. MACCORKINDALE**. 19 W. R., 159

art. 107 (1871, art. 107).

Under Act XIV of 1859, six years was the period of limitation for the suits mentioned in this article (suits by the manager of a joint estate of an undivided family for contribution in respect of a payment made by him on account of the estate). As to the cause of action, the decisions were in accordance with this article.

See **RAM KRISHNA ROY v. MADAN GOPAL ROY**
[6 B. L. R., Ap., 103: 12 W. R., 194

BIMALA DEBI v. TARASUNDARI DEBI
[6 B. L. R., Ap., 101: 14 W. R., 480

Joint Hindu family—Debts of manager—Contribution, limitation in respect of, Suit for.—Where money is borrowed by the manager of a joint Hindu family on his personal security for purposes of necessity, his right to contribution arises when he expends the money, and limitation runs against his claim from that date and not from the date on which he repays the loan and releases his security. **Sunkur Pershad v. Goury Pershad**, I. L. R., 5 Calc., 321; **Ram Krishna Roy v. Madan Gopal Roy**, 6 B. L. R., Ap., 103: 12 W. R., 194, followed. **AGHORE NATH MUKHOPADHYA v. GRISH CHUNDER MUKHOPADHYA** I. L. R., 20 Calc., 18

art. 109 (1871, art. 109).

1. *Act XIV of 1859, s. 1, cl. 16—Suits for mesne profits.*—Six years was the period of limitation for suits for mesne profits under cl. 16, s. 1 of Act XIV of 1859. **LALLA GOBIND SURAYE v. MUNOHUR MISSEER**. 1 W. R., 65

RAM SURUN SINGH v. GOOROO DYAL SINGH
[1 W. R., 83

PRATAP CHANDRA BURUA v. SWARNAMAXI
[3 B. L. R., Ap., 81

ISSUREENUND DUTT JHA v. PARBUTTY CHURN JHA. 3 W. R., 13

RAMAPUT SINGH v. FURLONG. 3 W. R., 38

LUCHMUN SINGH v. MIRIAM. 5 W. R., 219

MUNEERAM ACHARJEE v. TURUNGO
[7 W. R., 173

BALUM BHUTT alias RAM BHUTH v. BHOOBUN LALL. 6 W. R., 78

NAWAB NAZIM OF BENGAL v. RAJ COOMAREE DEHEE. 6 W. R., 113

KATTAMA NACHIAH v. SUBBRAMA AIYAN, ZAMINDAR OF SHIVAGUNGA v. SUBBRAMA AIYAN
[4 Mad., 302

HUREEHUR MOOKERJEE v. MOLLAH ABDOLBURE
[17 W. R., 209

JUGGUT CHUNDER BHADOORY v. SHIB CHUNDER BHADOORY. 22 W. R., 255

LIMITATION ACT, 1877—continued.

See also **MODHOOSOODUN SANDYAL v. SUROOP CHUNDER SIBCAR CHOWDHRY**

[7 W. R., P. C., 73: 4 Moore's I. A., 431

2. *Cause of action—Suit for mesne profits.*—In calculating the six years' mesne profits which the decree-holder was entitled to recover in this case, the cause of action was held to have arisen at the end of the year in which the ouster took place. **THAKOOR DOSS ACHARJEE CHUCKERBUTTY v. SHOSHEE BHOOSUN CHATTERJEE** 17 W. R., 208

RAM CHUNDRA ROY v. AMBICA DOSSEA
[7 W. R., 161

3. *Cause of action—Date of ascertainment of amount.*—Where the amount of mesne profits cannot be ascertained till after the end of the year, the cause of action was held not to arise until the end of the year. **BYJNATH PERSHAD v. BADHOO SINGH**. 10 W. R., 486

THAKOOR DASS ROY CHOWDHRY v. NOBIN KRISTO GHOSE. 22 W. R., 126

Or in cases of dispossession, the date of dispossession is the date when the cause of action arises in suits for mesne profits. **EBBAL ALI KHAN v. KALEE PERSHAD**. 3 W. R., 68

4. *Mesne profits—Wrongdoers independent of the defendant—Civil Procedure Code (1882), s. 211.*—In a suit brought on the 26th September 1893 for mesne profits of land, for the possession of which a decree had been previously obtained against the defendant, the plaintiff claimed damages in respect of the Fusli years 1297-1300—the year 1297 F. ending on the 28th September 1890. The defendant objected (*inter alia*) that the claim in respect of the period beyond three years before the date of suit was barred by limitation, and that she was not liable for profits of the lands from which she had been dispossessed by others. *Held* (1) under art. 109, sch. II of the Limitation Act, the defendant was liable for the mesne profits received by her or which she might have with due diligence received during the three years before the date of suit, and not before. The period of three years fixed has no reference to the time when rents fall due. **Byjnath Pershad v. Badhoo Singh**, 10 W. R., 486; **Thakoor Dass Acharjee Chuckerbutty v. Shoshee Bhoosun Chatterjee**, 17 W. R., 208; and **Thakoor Dass Roy Chowdhry v. Nobin Kristo Ghose**, 22 W. R., 126, distinguished. (2) In the case of every wrong the liability of the defendant is limited to damages for the wrong which he has himself done. With reference to the definition of mesne profits in s. 211 of the Civil Procedure Code, if the defendant was excluded from possession, she could not be said to have actually or even impliedly received the profits, nor could she with ordinary or extraordinary diligence have received them; the case was remanded to determine what mesne profits were payable between the 26th September 1890 and the date, if any, when dispossession was proved. **ABDAS v. FASSHUDDIN**
[I. L. R., 24 Calc., 413

5. *Dispossession under decree subsequently reversed by Privy Council.*—Where

LIMITATION ACT, 1877—*continued.*

claimed shall have become due. **GOBIND KUMAR CHOWDHRY v. HARGOPAL NAG**

[3 B. L. R., Ap., 72: 11 W. R., 537]

2. — *Suit for arrears of rent.*—

Where a part-proprietor of a certain talukh, who was also a co-sharer in a fractional portion thereof, brought suits against his co-talukhdars in the Revenue Court for arrears of rent without allowing any deduction on account of his share, which suits were dismissed for want of jurisdiction, and afterwards brought a suit for the rent for the same period in the Civil Court,—*Held* that the suit was not one for the recovery of arrears of rent within the meaning of s. 29, Bengal Act VIII of 1863, but was governed by the provisions of Act XIV of 1859. The suit was one for rent of land, and fell within the scope of cl. 8, s. 1 of that Act. **GOBINDO COOMAR CHOWDHRY v. MANSON** . 10 B. L. R., 56: 23 W. R., 152

3. — *Suit for compensation in shape of rent for land.*—A suit to make the defendant liable for compensation in the shape of rent for the land which he held in the name of his servant was held to be not a suit for rent under Bengal Act VIII of 1869, and was subject to the six years' limitation prescribed by cl. 16, s. 1, Act XIV of 1859. **KISHENDUTTY MISRAH v. ROBERTS**

[16 W. R., 287]

4. — *Suit for compensation for use and occupation of land.*—Where a contract of lease was found to be a benami transaction, and the lessor, though he had all along received the rent from the ostensible lessees, was held to be entitled, when the tenure passed by sale in execution to a third party, to claim the rent due from the beneficial lessees,—*Held* it was not a suit for rent, but for compensation for use and occupation of the lands demised, and cl. 16 of s. 1 of Act XIV of 1859 was applicable to it. **DEBNATH ROY CHOWDHRY v. GUDADHUR DEB. PITAMBUR SEN v. DEBNATH ROY CHOWDHRY** . 18 W. R., 132

As to s. 1, cl. 8, of the Act of 1859, see **POULSON v. CHOWDHRY** . 2 W. R., 21

UNNODA PERSAUD MOOKERJEE v. KRISTO COOMAR MOITRO . 15 B. L. R., 60 note: 19 W. R., 5
and **HUREE KISHORE ROY v. HUR KISHORE ADHIKAREB** . 23 W. R., 134

5. — *Act XIV of 1859, s. 1,*

cl. 8—*Suit for rent under benami lease—Use and occupation.*—Plaintiff, who was the zamindar, having obtained a decree against the auction-purchaser of a patni tenure held under his zamindari for the rents of the years 1279, 1280, and 1281, and being unable to realize the whole amount due under the same, subsequently learned that A, who had purchased a share in the patni from B, who derived his title from the original defendant, had been in possession during these years. He then sued A for the balance due under the first decree. This suit was filed on the 21st Baisack 1285. *Held* that the second suit, whether it was governed by Bengal Act VIII of 1869 or by the general law of limitation, was barred, inasmuch as it was a suit for rent and brought more

LIMITATION ACT, 1877—*continued.*

than three years after the arrears became due. **Pitambur Sen v. Debnath Roy Chowdhry**, 18 W. R., 132, cited and distinguished. **RAJ RUNJUN CHUCKERBUTTY v. RAM LALL MUKHOPADHYA**

[5 C. L. R., 62]

6. — *Madras Rent Recovery Act (Mad. Act VIII of 1865), s. 10—Suit for arrears of rent—Date from which limitation runs.*—In a suit for arrears of rent due under a decree given under s. 10 of the Rent Recovery Act (Madras Act VIII of 1865) the period of limitation in art. 110, sch. II of the Limitation Act, commences from the date when the plaintiff was in a position to sue for rent, i.e., the date of the decree. **SOBHANADRI APPA RAU v. CHALAMANNA** . I. L. R., 17 Mad., 225

7. — *Madras Rent Recovery Act (Mad. Act VIII of 1865), s. 10—Suit to recover arrears of rent—Proceedings in Revenue Court to enforce acceptance of pottah tendered—Time from which period of limitation is computed.*—In a suit for rent for a period which had expired more than three years before the date of the plaint, it appeared that proceedings had taken place in a Revenue Court under the Rent Recovery Act (Madras), 1865, to enforce acceptance by the defendant of the pottah tendered by the landlord. These proceedings had terminated on appeal in favour of the landlord less than three years before the institution of his suit. *Held* that the period of limitation applicable to the suit was not computable from the date of the termination of the proceedings under the Rent Recovery Act, and that the suit was barred by limitation. **SOBHANADRI APPA RAU v. CHALAMANNA**, I. L. R., 17 Mad., 225, overruled. **SEIRAMULU v. SOBHANADRI APPA RAU** . I. L. R., 19 Mad., 21

8. — *Madras Rent Recovery Act (Mad. Act VIII of 1865), s. 10—Suit to recover arrears of rent—Suit to enforce acceptance of pottah pending—Time from which period of limitation is computed.*—The cause of action, with reference to limitation, in a suit for rent, accrues on the date on which the rent is payable by custom or contract, irrespective of whether pottah has been tendered or a suit to enforce acceptance of pottah under the Rent Recovery Act (Madras), 1865, is pending. **KUMARASAMI PILLAI v. PRESIDENT, DISTRICT BOARD OF TANJORE**

[I. L. R., 22 Mad., 248]

RANGAYYA APPA RAU v. VENKATA REDDY

[I. L. R., 22 Mad., 249 note]

PARAMASIVA GOUNDAN v. KANDAPPA GOUNDAN

[I. L. R., 22 Mad., 250 note]

9. — *Suit for arrears of rent by assignee of landlord—Bengal Tenancy Act, sch. III, art. 2.*—Art. 2 of Part I of sch. III of the Bengal Tenancy Act does not apply to a suit brought by an assignee of the arrears from the landlord, but art. 110 of the second schedule to the Limitation Act is applicable to such a case. **MOHENDRA NATH KALAMABER v. KOILASH CHANDRA DOGRA**

[4 C. W. N., 605]

LIMITATION ACT, 1877—continued.

JOYKURUN LALL & ASMUDH KOGER

[5 W. R., 125]

6. Cause of action—Dispos-

fact of

entitled

DREY &

5 B. L. R., Ap, 61

S C LUCKHRE KANT DOSS & DREY DIAL DOSS

[14 W. R., 82]

7. Default caused by act of
another party—Assam—Suit for partition—Wherebrought, the party suing was not
meane profits.—Held that, under the circumstances,
meane profits were prevented the plaintiff from

not applying to Assam previous to July 1877

KAMAL LAHURI & GUNOMANI DEB

[7 B. L. R., 113; 15 W. R., 113]

8. Period of time
making up accounts.—Where the estate are made up at the end of the year, meane profits are rightly charged each year, and interest may be charged on the same.

CHOWDERY WATER

9. Suit for possession
tored to possession under a decree of the court.
The right of action to a decree for possession under a decree of the court.

LIMITATION ACT, 1877—continued.

not accrue before the decision of the Privy Council,
and he is entitled to interest on meane profits from the date of the decision to one year after it.10. Suit for possession of land
suit instituted after Act XIV of 185911. A claim for meane profits during the three years next before the date of the suit is barred by Act XV of 1859.
KRISHNANAND & PARTS NARAYAN
[L. L. R., 10 Cal., 383; 14 W. R., 113]

12. The defendant obtained a decree against the plaintiff for possession of land, in execution of which he carried away the land. The plaintiff brought a suit for possession of the land, and the court decreed that the plaintiff was entitled to possession of the land. The plaintiff was not entitled to interest on the decree amount, and the plaintiff was not entitled to interest on the decree amount.

LIMITATION ACT, 1877—continued.

assuming the suit might, so far as limitation was concerned, be entertained, still, as the right to possession was dependent on the contract of sale, if the suit could not be maintained for specific performance of the contract, it could not be maintained for possession of the property sold under the contract. **MUHI-UD-DIN AHMAD KHAN v. MAJLIS RAI**

[I. L. R., 6 All., 213]

7. — Breach of contract—Suit for specific performance.—In a suit to enforce the performance of an agreement alleged to have been entered into between the plaintiffs and the principal defendants whereby the latter, in consideration of an undertaking subsequently carried out, was to admit the former, who were his uterine brothers, to a share of the property of his adoptive father, which included an interest in land, *Held* that the defendant was in a position to fulfil that contract on the deaths of his adoptive parents respectively, and that plaintiff's suit, not having been brought within three years of the dates of those deaths, was barred by limitation. **MOHADDO LALL v. NUNDUN LALL**. 12 W. R., 22

8. — Exchange—Agreement that if either party were deprived of land received he should receive other land.—In 1871 the plaintiffs and the defendants executed a deed whereby they effected an exchange of certain lands, and each party agreed to resist by legal process or by bringing an action any claim or interference with the other in respect of the property exchanged, and to bear the costs which might be incurred in such legal proceedings in certain proportions, and that, if as a result of such proceedings either of the parties were deprived of the lands exchanged or any part of them, the other should make it up out of certain of his own land. In 1881 the plaintiffs brought an action against a third party who claimed title to some of the exchanged lands, and joined the defendants as defendants, the latter admitting the plaintiffs' title. The plaintiffs were defeated in that suit in 1882. In 1885 (within three years from the time the defendants refused to give them other land) they sued on the deed of 1871 to have the exchange therein provided for carried out. *Held* by the Full Bench that the cause of action arose in 1882, when there was a loss to the plaintiffs in the sense contemplated in the deed, and the defendants were called upon specifically to perform their covenant, and that the present suit, having been brought within three years after their refusal to perform it, was within the time fixed by art. 113, sch. II of the Limitation Act (XV of 1877). **HORI TIWARI v. RAGHUNATH TIWARI**

[I. L. R., 10 All., 27]

art. 114 (1871, art. 114)—Suit by company for price of shares allotted—Right of defendant to rescind contract—Laches of defendant.—In a suit by a company for the price of shares allotted to the defendant in which the defence was that there had been misstatements and misrepresentations which entitled him to rescind the contract, *Quare*—Whether, if art. 114 of sch. II of the Limitation Act was applicable to the case and the defendant was entitled to bring an action for the rescission of the contract within three years from the time

LIMITATION ACT, 1877—continued.

when the facts entitling him to rescind the contract first became known to him, the principle laid down in *Peel's case*, L. R., 2 Ch., Ap., 674, and *Lawrence's case*, L. R., 2 Ch., Ap., 412, under which the defendant would be barred by his laches from rescinding the contract, applies to the case. **Tennent v. City of Glasgow Bank**, L. R., 4 Ap. Cas., 615, referred to. **MOHUN LALL v. SRI GANGAJI COTTON MILLS CO.** 4 C. W. N., 389

— art. 115 (1871, art. 115).

1. — Suit for breach of contract.—In a suit to recover a sum of money (principal and interest) on account of rent paid for a certain mouzah which had been farmed out to the plaintiff by defendant No. 1, but of which the plaintiff could not get possession, *Held* that the cause of action, as laid in the plaint, was a breach of contract on the part of the principal defendant, and the action was one for damages falling under s. 1 of Act XIV of 1859 within the meaning of cl. 9 if the contract of lease was verbal, and within cl. 10 if it was in writing. The case was not that of a suit for breach of an implied contract as distinguished from a contract of actual agreement, and the obligation of the defendant to make good the loss caused to the plaintiff was not one merely which the law raises upon a state of circumstances independently of any actual agreement. **BROOKE v. GIBBON** . . . 19 W. R., 244

Upheld on review 21 W. R., 47

2. — Implied contract—Contract to do repairs.—Where the defendant employed the plaintiff to repair a bungalow, but no express agreement was come to as to the payment for the repairs, it was held that on the performance of the repairs an implied contract to pay their fair value arose, for which the period of limitation was six years, as ruled in *Umedchand Hukamchand v. Bulakidas Lalchand*, 5 Bom., O. C., 16. **NARO GANESH DATAR v. MUHAMMAD KHAN** 9 Bom., 280

3. — Contract between doctor and patient as to fees.—Where a doctor is engaged to treat a patient without any arrangement being made at the time as to his fees, there is an implied contract, an action for breach of which was governed by the three years' limitation under s. 1, cl. 9, of Act XIV of 1859. **HURISH CHUNDER SURMAH v. BROJONATH CHUCKERBUTTY**

[13 W. R., 98]

4. — Suit for money received by vakil and paid to agents of client—Cause of action.—A vakil received money for his clients and gave it to their agent for delivery to them; the agent did not deliver it accordingly, and the vakil was compelled by the Civil Court to pay it over again. The vakil thereupon sued the agent for the money. *Held* that the case fell under s. 1, cl. 16, of the Act of Limitation, 1859. *Held* also that, treating the case as one of implied contract, the cause of action arose when the plaintiff was compelled to pay money which the defendant was legally bound to pay; and, thirdly, that, if the defendant was in truth the plaintiff's agent, but had induced the plaintiff to make him so by the fraudulent representation that he was the

LIMITATION ACT, 1877.—continued.

10. Enforcement of vendor's lien.—In 1887 the plaintiff sold land to defendant No 1 who in 1894 while part of the purchase-money remained unpaid, sold it to the defendants Nos 2 to 4 who had notice of this fact. The plaintiff now in 1895 sued to enforce his vendor's lien. *Held* that the suit was barred by Limitation Act, 1877, sch II, art 111. **SOUNDARAJAN AYYANGAR** **DATTAJI CHETTI** v

[L. L. R., 21 Mad., 14]

Spa Central e Das Jeteu

L. L. R., 22 Bom, 848

art. 113 (1871, art. 113)

LIMITATION ACT, 1877—continued.

doubtful if art. 61 of the second schedule of Limitation Act would apply, as against the Secretary of State for India in Council, but even if not, the suit was barred by art. 115. **DOYA NARAIN TEWARY v. SECRETARY OF STATE FOR INDIA**

[I. L. R., 14 Calc., 256

14. ————— and art. 120—*Re-marriage of Hindu widow—Custom—Breach of contract.*—The plaintiff sued the defendant, who had married the plaintiff's deceased brother's widow, to recover, by way of compensation, the money expended by his deceased brother's family on his marriage, founding his claim upon a custom prevailing among the Jats of Ajmere, whereby a member of that community marrying a widow was bound to recoup the expenses incurred by her deceased husband's family on his marriage. *Held* that the suit was one of the character described in No. 115, sch. II of Act XV of 1877, and not in No. 120 of that schedule, and the period of limitation was therefore three and not six years. **MADDA v. SHEO BAKSH**

[I. L. R., 3 All., 385

15. ————— and art. 30—*Suit by consignee against railway company for non-delivery.*—Where a suit is brought against a railway company by the consignee of goods (not sent on sample or for approval) for compensation for non-delivery, the period of limitation is not two years (art. 30), but three years (art. 115, sch. II of the Limitation Act, 1877), inasmuch as the consignor contracts with the company as agent for the consignee, and the property in the goods passes to the consignee on delivery to the company. **HASSAJI v. EAST INDIAN RAILWAY COMPANY**

[I. L. R., 5 Mad., 388

16. ————— and art. 30—*Bill of lading—Contract, Breach of, for delivery of goods—Onus of proof of loss of goods.*—Where a plaintiff brings a suit for breach of contract for non-delivery of goods under a bill of lading, it is not open to the defendant, after having denied receipt of the goods, to set up, or for the Court, after finding that the goods had been shipped, but not delivered, to assume, without evidence, that the goods were lost, in order to bring the case within art. 30, sch. II of the Limitation Act of 1877. *Per GARTHE, C.J.—Sembie*—Where a plaintiff sues for breach of contract and proves his case, the three years' limitation would be applicable, although the defendants were to prove that the breach occurred in consequence of some wrongful act of theirs, to which the shorter limitation would apply. **Mohansing Chawan v. Conder, I. L. R., 7 Bom., 478, and British India Steam Navigation Company v. Mahomed Esack, I. L. R., 3 Mad., 107, approved.** **DANMULL v. BRITISH INDIA STEAM NAVIGATION COMPANY** . I. L. R., 12 Calc., 477

17. ————— *Loan on verbal agreement to repay at a specified date.*—A suit to recover money lent with interest upon a verbal agreement that the loan should be repaid with interest one year from the date of the loan, is governed by art. 115 of ch. II of Act XV of 1877, which virtually provides for all contracts, which are not in writing, registered,

LIMITATION ACT, 1877—continued

and not otherwise specifically provided for. **WAR MANDAL v. RAM CHAND ROY**

[I. L. R., 10 C

18. ————— and art. 57—*tracted to be payable at a future date.*—against the legal representative of a decedent to recover the amount of the debt it appeared the debt was contracted on 30th September and was to be repayable a month after that a suit brought on 24th October 1888.—**MUTTUSAMI AYYAR and PARKER JJ.**, that of limitation should be computed from the date the debt was due, and the suit was not barred as a suit is governed by art. 115, and not by the Limitation Act. **Rameshwar Mandal Chand Roy, I. L. R., 10 Calc., 1033.** **RAMASAMI v. MUTTUSAMI** I. L. R., 15 M.

19. ————— *Suit on contract entered—Money due under unregistered contract—Money to be paid for purpose—Construction of agreement.*—The plaintiffs were husband and wife, and they were on the 14th March 1888. On the day of marriage the defendant, who was the first plaintiff, gave him a note addressed to his (the defendant's) firm as follows: "I pleased to pay R7,000, namely, seven thousand rupees in respect thereof, together with thereon, at the rate of R4, namely four per cent per annum, within a period of 3 years, years from this day." The first plaintiff this note to the defendant's firm, and it received the following document addressed to "You sent one chithi (note) for R7,000, seven thousand, on me. The sum which you caused to be paid to you in respect of the ornaments pertaining to your marriage has been to your account, bearing interest at 4, namely per cent. For the same this 'receipt' has been in writing." No money was actually paid by the defendant to the plaintiffs, and none was lodged in the defendant's firm by the plaintiffs, but subsequent to the above transaction an account was kept by the defendant's books, in which the first plaintiff was duly credited with interest every year. In 1894, the first plaintiff demanded from the defendant the amount standing to his credit out of his account. The defendant pleaded limitation. *Held* that the purpose for which the money was to be paid was the purchase of ornaments for the wife, and that it was the intention of the parties that the money should not be made until the plaintiffs were paid to purchase ornaments, and that until the money should remain with the defendant's firm the intention was that the money should not be paid until the plaintiffs required it for the purchase of the ornaments, and demanded it. The contract was not broken until the plaintiffs demanded the money, which they did in March 1894. Art. 115 of sch. II of the Limitation Act (XV of 1877) applied to the case, and the suit was not barred. **MANOHARJI BOMANJI v. NUSSERWANJI MANOHARJI** I. L. R., 20 B.

LIMITATION ACT, 1877—continued

have
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21

5 ———— *Contract to supply goods*
—*Suit for balance due*—In a suit to recover a
balance due for articles supplied to defendant on
account current between the parties where an

intervals after payment on presentat on it was found
that plaintiff last on the 1st Assar 1276 returned
to defendant the unpaid chittis then on hand but

20 W 1, 100

6 ———— *Breach of contract in not*
satisfy ng decree—Cause of action—Where S for

7 ———— *Suit for trees on land after*
ejection—Cause of action—A having been in
possession of garden land from 1850 as tenant of B
under a two years lease continued to occupy as
yearly tenant till 1860 when he was ejected in

[3 Bom A C, 21

8 ———— *Suit on agreement to pay*
rent to creditor—Cause of action—Plaintiff exe
cuted a zim i peshgi lease to defendant for a term of
years and arranged with him contemporaneously

9 ———— *Suit for abatement of rent*
founded on agreement for measurement—Payment

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of same rent—Abandonment In a suit for abate
ment of rent founded on an agreement that at a
certain time the land should be measured and if

saying that the agreement was abandoned by the
parties *PROSVUNNO MOYEE DOSSEE v DOYA MOYEE*
DOSSEE 22 W R, 275

11 ———— *Contract for manufactured*
and go—Breach of contract Certain factor es al
ready sown with indigo were given in lease by the

12 ———— *Su t for breach of contract*

ESACK & Co

I L R, 3 Mad, 107

13 ———— and s 61 *Agent for pur*
chase of stores for Government Suit by—Cause
of action—Suit against Secretary of State—A
knouledgment—Act XV of 1877 ss 19 and 20—The

pay him the amount claimed Held that it was

B A

LIMITATION ACT, 1877—continued.

that on that day he had demanded payment; that the cause of action arose on that day, as the defendant did not pay; and that he claimed such money accordingly. The plaint did not make any mention of such bond. *Held* that the suit was not one which fell within the scope of art. 66 of sch. II of Act XV of 1877, but one to which art. 116 of that schedule was applicable, and it might proceed on the plaint without any amendment thereof. **GAURI SHANKAR v. SUNKUR**. I. L. R., 3 All., 276

8. — *Suit to recover money due on registered land—Compensation for breach of contract.*—A suit to recover money due upon a registered land is a suit for compensation for breach of contract in writing registered within the meaning of art. 116 of sch. II to Act XV of 1877, and must be brought within six years from the time when the period of limitation would begin to run against a suit brought on a similar contract not registered. **NOBOCOMAR MOOKHOPADHAYA v. SIRU MULLICK**. I. L. R., 6 Cal., 94

9. — *Registered land for the payment of money.*—*Held*, following **Husain Ali Khan v. Hafiz Ali Khan**, I. L. R., 3 All., 600, that a suit on a registered land for the payment of money, which has not been paid on the due date, is a suit for compensation for the breach of a contract in writing registered, and therefore the limitation applicable to such a suit is that provided by art. 116, sch. II of the Limitation Act. The principle on which the ruling that a suit on a bond which has not been paid on the due date is a suit for compensation explained by **SITART, C.J.**, and **Nobocomar Mookhopadhaya v. Siru Mullick**, I. L. R., 6 Cal., 94, referred to. **KHUSNI v. NASIR-UD-DIN AHMAD**. I. L. R., 4 All., 255

10. — *Suit for money due on registered land.*—A suit to recover money due upon a registered land is a suit for compensation for breach of contract within the meaning of art. 116, sch. II of Act XV of 1877. **Nobocomar Mookhopadhaya v. Siru Mullick**, I. L. R., 6 Cal., 94; 6 C. L. R., 579. See **Gauri Sunkur v. Surju**, I. L. R., 3 All., 276; **Ganesh Krishna v. Madharrav**, I. L. R., 6 Bom., 75; **Vithilinga Pillai v. Thetchanamurti Pillai**, I. L. R., 3 Mad., 76. **KALIT RAM v. LALA DHANUKPHARI SAHAI**. II C. L. R., 361

11. — *Registered land executed by minor.*—A sum of money was advanced by the plaintiff to a minor who gave a bond for the amount and duly registered the same. In a suit on the bond it was urged on behalf of the minor, who had not attained majority at the time the suit was filed, that he was not liable under the bond, and that the fact of its being registered could not help the plaintiff, and consequently the suit was barred by limitation, being brought more than three years after the advance was made. *Held* that in such a case the bond could not be ignored and treated as non-existent, being the basis of the suit, and that, on its being proved to have been executed by the minor in respect of money advanced for necessaries, effect must be given to the fact of registration, and the suit having been brought within six years from the date of the bond was not barred by

LIMITATION ACT, 1877—continued.

limitation, and the plaintiff was entitled to a decree. **SHAM CHARAN MAH v. CHOWDHRY DEHYA SINGH PANDEY**. I. L. R., 21 Cal., 87

12. — *Suit on a registered bond and for misappropriation by executor de son tort.*—In a suit on a registered bond payable in eleven yearly instalments to recover instalments 5 to 7 from the representatives of two deceased co-debtors (who as managing members of an undivided Hind family had contracted the debt for family purposes) the plaintiff added as defendants A, the son-in-law of one of the deceased co-debtors, and his two brothers on the ground that they, in collusion with the widow of such deceased co-debtor, had as volunteers intermeddled with and possessed themselves of substantially the whole property of the family of the deceased co-debtor. The bond was dated 26th March 1870. The earliest instalment sued for fell due on 13th March 1874. *Held* that, as the bond was a registered bond and the property had been misappropriated within three years of the date of the suit, the suit was not barred by limitation. **MAGALURI GURUDIAN v. NANTANA RENGIAH**. I. L. R., 3 Mad., 359

13. — *Suit to recover arrears of rent on registered contract—Compensation—Contract Act, s. 73.*—A suit to recover arrears of rent upon a registered contract is governed by art. 116, sch. II, Act XV of 1877. Compensation is used in the same sense in that article as is the Contract Act, s. 73. **VITHILINGA PILLAI v. THETCHANAMURTI PILLAI**. I. L. R., 3 Mad., 76

14. — *and art. 113—Suit by mortgagor to recover money due on a registered mortgage-deed.*—A suit by a mortgagor to recover money due on a registered mortgage-deed, together with damages for non-payment, is not a suit to which the period of limitation prescribed by the Limitation Act (XV of 1877), sch. II, art. 113 (for specific performance of a contract) is applicable. The period of limitation applicable to such a suit is that prescribed by art. 116 of sch. II of the said Act (for compensation for the breach of a contract in writing registered); and the time from which limitation will run against the mortgagor is, in the absence of any specific provision to the contrary, the date of the execution of the mortgage-deed. **Gauri Shankar v. Surju**, I. L. R., 3 All., 276; **Husain Ali Khan v. Hafiz Ali Khan**, I. L. R., 3 All., 600; **Nobocomar Mookhopadhaya v. Siru Mullick**, I. L. R., 6 Cal., 94; **Vithilinga Pillai v. Thetchanamurti Pillai**, I. L. R., 3 Mad., 76; and **Ganesh Krishna v. Madharrav Rarji**, I. L. R., 6 Bom., 75, referred to. **NAURAT SINGH v. INDAR SINGH**. I. L. R., 13 All., 200

15. — *and art. 65—Vendor and purchaser—Agreement by purchaser to refund purchase-money in case land sold proved deficient in quantity—Suit for refund—Suit for compensation for breach of contract.*—The vendor of certain land agreed in the conveyance, which was registered, that in case the land actually conveyed proved to be less than that purporting to be conveyed, he should make a

LIMITATION ACT, 1877—continued

20 ————— *Breach of contract—Cause of action—Damages* In a suit for breach of a contract to be performed at different times the period of limitation must be calculated from each breach of contract as it arises. Where there is a contract for performing certain duties in each of several years.

See the decision of the case by the Division Bench after the ruling of the Full Bench. *MOTER SAKOO v FORBES* 6 W R 278

On this clause see also *LUKHINABAI MITTER v KHEETRO PAL SING ROY* 13 B. L. R. P. C, 148 20 W R 380

21 ————— *Continuing breach—Contract*—A agreed with B to refund to N the price of certain property sold by A to N and of which a share belonged to B. A having died without fulfilling the agreement N obtained against B a decree for possession of part of the property. Five years subsequent to N's suit B's heirs sued A's heirs for damages for breach of the agreement. Held that such breach of the agreement was a continuing breach and had not even yet ceased and that therefore the present suit was not barred by art 115 sub II of the Limitation Act. *IMDAD ALI v NIJABAT ALI* 1 L. R. 6 All, 457

22 ————— and 23—*Bond—Interest post datum—Non payment of principal and interest at agreed date—Continuing breach—Successive breaches*—Upon failure to pay the principal and interest secured by a bond upon the day appointed for such payment breach of the contract to pay is committed and there is no continuing breach. *on Act*

1 L. R. 20 All, 85

23 ————— *Breach of contract—Re*

agreed that the revenue registry should return the change of the revenue registry. The should return the purchase-money. C was put in possession but in

art. 116

See DEKKAN AGRICULTURISTS RELIEF ACT 1879 s 721 L. R. 9 Bom., 320

1. ————— *Contract or engagement in writing*—Where a writing signed by the defendant was in these terms S (defendant) holds B475

LIMITATION ACT, 1877—continued

which sum is the property of L (the plaintiff). Held that the document could not be considered a written contract or engagement. *LAKSHMANAYAN v DIVASANT ROW* 4 Mad, 218

2 ————— *Contract or engagement in*

promissory note had been registered previous to the

See SHUMBO CHUNDER SHAHA v BARODA SOON DUREE DEBIA 5 W R, 45

3 ————— *Mode of registration—Registration before cases* The registration must be under one of the Registration Acts or Regulations. Attestation before a commissioner is held not to be registration within cl 10 s 1 of Act XIV of 1859. *DOYA MOYER DABEE v NOBOYER DABEE* 1 W R., 89

4 ————— *Registered bond—Held that*

1 L. R., 3 All, 600

5 ————— *Registered instalment bond* Suit on—Contract in writing registered—Art 116 of the Limitation Act is applicable to a suit on a

6 ————— *Registered bond—Compen-*

7 ————— *Registered bond for the payment of money—Suit for compensation for the breach of a contract in writing registered*—The defendant having borrowed money from the plaintiff, gave him a bond dated 4th July 1872 for the payment of such money with interest within two years or on certain contingencies contemplated and defined in such bond. Such bond did not specify a

LIMITATION ACT, 1877—continued.

art. 116 of the Limitation Act. *UPRAH CHENDR MURTHI v. ADAR POND DAI*

(I. L. R., 16 Calc., 121)

23. — *Suit on bond.*—A and as assignee of bond (payable in 1872), hypothecating bond in the mortgage. B, A's assignor, was a vakil practising in the High Court. B had obtained an assignment of the obligor's interest in the bond sued on, and also another bond for Rs. 1000 between the same parties after the 1st July 1882, for Rs. 500. B had previously purchased the two bonds at a sale in execution of the decree of a mortgage Court for Rs. each. A's assignment from B purported to be made to A in payment of certain debts owed to him by B. No interest had been paid on the bond, and no tender had been made to the plaintiff. Held in a suit brought in 1884 that the creditor's personal remedy was barred by art. 116 of the Limitation Act. *BATHINJAM v. SUBRAMANYA*

(I. L. R., 11 Mad., 50)

24. — *Damages for non-payment of due date.*—Charge on hypothecated property.—Necessity or continuing breaches of contract.—Damages given after the due date of a mortgage for non-payment of the principal money upon the due date, are damages for breach of contract, and not interest payable in performance of a contract; and under art. 116, sch. II of the Limitation Act (XV of 1877), a suit to recover such damages must be brought within six years from the time when the contract for the breach of which they are claimed was broken. It cannot be said that such damages are, from the date when the contract was broken, and even before they have been ascertained or decreed, a charge upon the property hypothecated, so as to make art. 116 inapplicable. *Price v. Great Western Railway Co.*, 16 L. J. Exch., 57; *Morgan v. Jones*, 22 L. J. Exch., 232; *Cerdillo v. Weguelin*, L. J. R., 5 Ch. D., 257; *In re Kerr's Policy*, L. R., 8 Eq., 331; *Lippard v. Rickells*, L. J. R., 14 Eq., 291; *Cook v. Fowler*, L. R., 7 L. and J. Ap., 27; and *Bishen Dyal v. Udit Narayan*, L. J. R., 8 All., 456, distinguished. In such cases there is one breach of the contract, namely, the non-payment on the date agreed upon, and there is no question of continuing or successive breaches. *Mansab Ali v. Gulab Chand*, L. J. R., 10 All., 85, referred to. *BHAGWANT SINGH v. DARYAO SINGH*

(I. L. R., 11 All., 416)

25. — *Interest on deed of conditional sale.*—Interest after date fixed for payment of principal and interest.—Absence of agreement to pay such interest.—Compensation for breach of contract.—Where there is no stipulation in a deed of conditional sale to pay interest after the day fixed for the repayment of principal and interest, a claim for interest after due date is a claim for compensation for breach of contract, and a suit for the recovery of such compensation must be brought within six years from the date of the breach. *Juggomohan Ghose v. Manick Chand*, 7 Moore's I. A., 279, referred to. *Mansab Ali v. Gulab Chand*, L. J. R., 10 All., 85, and *Bhagwant Singh v. Daryao Singh*, L. J. R., 11 All., 416, approved of. *Bhugwan Lal v.*

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Mohip Narain Singh, unreported, and *Golam Abbas v. Mohamed Jaffer*, L. J. R., 19 Calc., 23 note, followed. *GUDRI KOER v. BHUMANTSWARI COOMAR SINGH*

I. L. R., 19 Calc., 19

GOLAM ADAB v. MAHOMED JAFFER

(I. L. R., 19 Calc., 23 note)

26. — *Mortgage by conditional sale.*—Interest after due date.—Interest Act (XXXII of 1839).—Limitation Act, art. 132.—Transfer of Property Act, s. 86.—Held by a majority of the Full Bench (MACLEAN, C.J., O'KINFAEL, J., and MACPHERSON, J.) that, when a mortgage-bond contains no stipulation for the payment of interest after the due date, interest is payable by virtue of the Interest Act (XXXII of 1839). Art. 116 of sch. II to the Limitation Act prescribes the period of limitation in such a case; and therefore only six years' interest after the due date at 6 per cent. per annum is recoverable. The mortgagor cannot redeem until he has repaid the principal sum with such interest and costs. *Gudri Koer v. Bhumbaswari Coomarr Singh*, L. J. R., 19 Calc., 19, approved. *Mathura Das v. Narindar Bahadur Pal*, L. J. R., 19 All., 89; L. R., 23 I. A., 138; *Cook v. Fowler*, L. R., 7 H. L., 27; and *Bikramjit Tewari v. Durga Dyal Tewari*, L. J. R., 21 Calc., 274, referred to. Held (by TRIVELLYAN and BANERJEE, JJ.) that the interest after due date should be regarded as interest due on the mortgage within the meaning of s. 86 of the Transfer of Property Act (IV of 1852); and that being so, that it becomes a charge on the mortgaged property, and the period of limitation applicable to the claim for such interest is twelve years under art. 132 of sch. II to the Limitation Act (XV of 1877). *MOTI SINGH v. RAMOHARI SINGH*

I. L. R., 24 Calc., 699

(I. C. W. N., 437)

27. — *Suit on mortgage.*—Claim for interest post diem in absence of covenant.—Claim in nature of damages.—The defendants hypothecated to the plaintiff, to secure repayment of a debt, their interest in certain lands. The hypothecation-deed was executed in 1875 and registered, and it contained the following terms with regard to interest and the repayment of the debt: "We (the obligors) shall pay interest at 7 per cent. per annum before the 30th October of each year; we shall pay in full the principal amount on the 30th October 1878, after clearing off the interest, and redeem this deed; should we fail to pay the interest regularly according to the instalments, we shall at once pay the principal together with the amount of interest." Default was made in the payment of interest in 1876. The plaintiff in 1888 sued the executors of the above instrument and their heirs and representatives to recover the principal together with interest up to date. The Court of first instance held that the claim for a personal decree was barred by limitation, but passed a decree directing the sale of the hypothecated land in default of payment of the principal together with interest up to date. On appeal,—Held that, since the instrument did not provide for interest post diem, any claim in the nature of a claim for such interest could be allowed by way of damages.

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refund to the purchaser of the purchase money in pro-

in proportion to the value of the land deficient, the purchaser sued the vendor for the value of the quantity of land deficient. *Held by SPANKIE, J.*, that the suit was one of the nature described in art 65, sch II of Act XV of 1877, to which, the agreement being in writing registered, the limitation provided by art 116, sch II of that Act, was applicable. *Held by OLDFIELD, J.*, that art 118, sch II of Act XV of 1877, was applicable to the suit. *KISHEN LAL v KINLOCK*

[I. L. R., 3 All, 712]

AJUDHIA

I. L. R., 10 All, 100

referred to GIRIJANUND DATTA JHA v SAILAJA-
NUND DATTA JHA

I. L. R., 23 Cal, 645

18. ———— *Suit for rent—Registered*

19. ———— *Covenant implied in regis-
tered sale deed—Transfer of Property Act (IX
of 1882), s 55—Implied covenant for title—Suit
for damages for breach—On 8th February 1889
the defendant sold to the plaintiff, under a registered
conveyance containing no express covenant for title,
land of which he was not in possession, and the pur-*

LIMITATION ACT, 1877—continued.

chase-money was paid. The plaintiff and the defen-
dant sued to recover possession, but failed on the
ground that the vendor had no title. The plaintiff
now sued on 7th February 1895 to recover with

suit was not barred by limitation, but the plaintiff
was entitled to the relief sought by him. *KRISHNAN
NAMBIAR v KANNAN* . I. L. R., 21 Mad, 8

20 ———— and art. 120—*Trans-
fer of Property Act (IX of 1882), s 68—Suit for
mortgage money by mortgagee on disturbance of*

21. ———— and arts 89 and 90—

of 1877, when the contract under which the agent
was employed is contained in a duly registered

art 110, sch II of Act XV of 1877, the word "compensa-
tion" seems to be used in the sense in which it
appears in s 73 of the Contract Act (IX of 1872).
In April 1878, A entered into an agreement in
writing with B, whereby he agreed to act as the
manager of B's zamindaris and other lauded prop-
erties for three years, on certain terms therein men-
tioned. The agreement was duly registered. On

GENERAL OF BENGAL . I. L. R., 12 Cal, 100

22 ———— *Suit for arrears of rent
—Registered contract.—A sues to recover arrears of
rent upon a registered contract is governed by sch. II.*

LIMITATION ACT, 1877—continued.

date of the death of the adoptive father," does not interfere with the right which, but for it, a plaintiff has of bringing a suit to recover possession of real property within twelve years from the time when the right accrued. *RAJ BAHADUR SINGH v. ACHUMBIT LAL* . . . L. R., 6 I. A., 110; 6 C. L. R., 12

3. ———— *Suit to set aside adoption.*

—Plaintiff sued in 1877 to set aside an adoption which was alleged to have taken place twenty years before, and, as heir of the husband of the last Adhikar, who died in 1282, to obtain possession of a certain temple and properties attached thereto which the defendant claimed under the said adoption. *Held*, on the authority of *Raj Bahadur Singh v. Achumbit Lal*, L. R., 6 I. A., 110; 6 Calc., L. R., 12, that the suit was not barred by art. 129, sch. II of Act IX of 1871. *PURNA NARAIN AUDHIKAR v. HEMOKANT AUDHIKAR*

[6 C. L. R., 46]

4. ———— *Suit to obtain a declaration*

that an alleged adoption is invalid or never took place—Suit for possession of immoveable property—Act XV of 1877, sch. II, art. 141.—Art. 118 of the Limitation Act applies only to suits where the relief claimed is purely for a declaration that an alleged adoption is invalid or never in fact took place. Such a suit is distinct from a suit for possession of property, and the latter kind of suit cannot be held to be barred as a suit brought under art. 118, merely by reason of its raising a question of the validity of an adoption, but is separately provided for by art. 141. It is discretionary in a Court to grant relief by a declaration of a right, and consequently the fact that a person has not sued for a declaration should not be a bar to a suit for possession of property on any ground of limitation prescribed for the former. *BASDEO v. GOPAL* . . . I. L. R., 8 All., 644

5. ———— *Act IX of 1871, art. 129—*

Meaning of "suit to set aside adoption."—Art. 129 of sch. II of Act IX of 1871, the Indian Limitation Act of that year, using the expression "suit to set aside an adoption," denoted a suit bringing the validity of an adoption into question; and the rule of limitation given by that article applied to all suits in which the suitor could not succeed without displacing an apparent adoption, in virtue of which the opposite party was in possession. The plaintiffs, as collateral heirs of a childless Hindu, questioned the adoptions purporting to have been made by his widows in pursuance of authority from him; such adoptions having been followed by continuous possession, and having been recognized in formal instruments, proceedings, and decrees to which the plaintiffs were parties. *Held* on the ground that the adoptions were brought into question more than twelve years after their date, though less than twelve years after the plaintiffs' titles (if any) had accrued at the death of the surviving widow, that the suits were barred under art. 129 of sch. II of Act IX of 1871. Part of the language of the judgment in *Raja Bahadur Singh v. Achumbit Lal*, L. R., 6 I. A., 110, referred to, and that case, in which the plaintiffs' claim was not affected by the widow's adoption, distinguished from the present. *JAGADAMBA CHAUDHRANI v. DAKHINA MOHUN*

LIMITATION ACT, 1877—continued.

ROY CHAUDHRI. SARODA MOHUN ROY CHAUDHRI v. DAKHINA MOHUN ROY CHAUDHRI

[I. L. R., 13 Calc., 308
L. R., 13 I. A., 84]

6. ———— *Suit questioning an adoption—Invalidity, by Hindu law, of second adoption.*

—An adopted son, proprietor in possession of half of the estate of his adoptive father, deceased, sued to obtain the other half which was in the defendant's possession. The defence was that the latter was entitled to the half share in dispute, having been adopted to the deceased under a power given by him to his widow, and exercised by her. *Held* that the suit, having, in order to succeed, brought into question the second adoption, was a suit to set aside an adoption within the meaning of art. 129, sch. II, Act IX of 1871, the Limitation Act in force for a period after the cause of suit had arisen. *Jagadamba Choudhrani v. Dakhina Mohan*, I. L. R., 13 Calc., 308; L. R., 13 I. A., 84, referred to and followed. With reference to the coming into operation of the subsequent Limitation Act (XV of 1877), s. 2 of the latter Act prevented the revival of any right to sue already barred by the previous Act, as the right now claimed had been. *Appasami Odayar v. Subramanya Odayar*, I. L. R., 12 Mad., 26; L. R., 15 I. A., 167, referred to. It was nevertheless clear that, if this suit had not been barred, the second adoption could not have been held valid under Hindu law as an adoption; because, by that law, a second adoption cannot be made during the life of a son previously adopted. *Rungana v. Atchama*, 4 Moore's I. A., 1, referred to. *MOHESH NARAIN MUNSHI v. TARUOK NATH MOITRA* . . . I. L. R., 20 Calc., 487
[L. R., 20 I. A., 30]

7. ———— and art. 125—*Suit by reversioner to declare adoption invalid and set aside alienation.*—Where a plaintiff as reversioner prayed for a declaration that an adoption alleged to have been made by a Hindu widow eighteen years before suit, was invalid, and that the sale of certain property made by the widow and the adopted son two years before suit was not binding upon him,—*Held* that the suit, being substantially brought to declare the invalidity of the sale so as to enable plaintiff to recover as reversioner on the death of the widow and adopted son, and the declaration as to the adoption being ancillary to that claim, was not barred by limitation. *SRINIVASA v. VENKATRAMANA* . . . I. L. R., 5 Mad., 121

8. ———— *Suit for declaration that alleged adoption is invalid.*—Where, in a suit brought in 1885 for a declaration that an adoption alleged to have taken place in 1871 was null and void, the factum of adoption was disputed, and it was not shown that the alleged adoption became known to the plaintiff before 1881,—*Held*, with reference to art. 118 of sch. II of the Limitation Act (XV of 1877), that the suit was within time. *Jagadamba Choudhrani v. Dakhina Mohun Roy Chaudhri*, I. L. R., 13 Calc., 308, distinguished. *GANGA SAHAI v. LEKHRAJ SINGH* . . . I. L. R., 9 All., 253

9. ———— *Suit for possession where adoption is set up—Hindu law, Adoption.*—Against

LIMITATION ACT, 1877 continued

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Limitat on Act BADI BIBI SAHIBAL & SAMI PILLAI
[I L R, 18 Mad, 257]

But see RAMA REDDI & APPAJI REDDI

[I L R, 18 Mad, 248]

where interest *post diem* was allowed though barred

28 ————— *Suit for interest post diem in absence of covenant—Suit on mortgage—The plaintiff sued in 1893 to recover principal together with interest due up to date on a mortgage which provided for the repayment of principal and interest in December 1886 but contained no covenant for the payment of interest post diem Held that the claim for interest post diem was barred by limitation* THAYAR AMMAL & LAKSHMI AMMAL
[I L R., 18 Mad., 331]

29 ————— *Claim for interest on*

[I L R., 18 Mad., 331]

But see MATHURA DAS & NARINDAR BAHADUR

[I L R, 19 All, 39]

L R, 23 I A, 138

1 C W N, 52

in which this decision was not approved of by the Privy Council

30 ————— *Building lease—Coal depot Lease for not agricultural or horticultural lease—Bengal Tenancy Act (VIII of 1885) sch*

PANIGANJ COAL ASSOCIATION & JUDCOVATH GHOSH
[I L R, 19 Calc, 489]

31 ————— *Suit between partners—*

that since the partnership agreement was registered the suit was governed by Limitat on Act sch II art 116. PANGA REDDI & CHINNA REDDI

[I L R, 14 Mad, 465]

LIMITATION ACT, 1877—continued

32 ————— and s 106—*Suit for an account of a dissolved partnership—Registered*

arts 118 119 (1871, art 129).

See DECLARATORY DECREE SUIT FOR—
ADOPTIONS I L R, 1 Bom., 248

And in the & of 1880 & of 1880

See MRINMOYEE DABEE & BHOOBUNMOYEE DABEE
[15 B L R, 1 23 W R, 43]

and KALOVA KOM BHUJANGRAV & PADAPA WALAD
BHUJANGRAV I L R, 1 Bom., 248

In another case the cause of action was held to accrue on the death of the adoptive mother and not at the date of the adoption TABINI CHURN CHOWDREY & SARODA SUNDARI DASI

[3 B L R, A C, 145 11 W R, 468]

Wh & of 1880 & of 1880

DASI 3 B L R, A C, 145 11 W R, 468

ISWAB CHANDRA MITTER & SHAMA SUNDARI DASI
[3 B L R, A C, 150 note]

RADHA KISSOREE DOSSEE & GUTHRIE KISSER
SIRCAR W R, 1884, 272

In HURONATH CHOWDREY & HURRI LALL
SHANA 11 W R., 477

it was held that a mere notice that an adoption has taken place is not of itself a cause of action from which limitation would run to bar a reversioner—a ruling which seems to be set aside by the present Act

[Marsh, 221 1 Hay, 497]

See contra RADHAKISSEN MAHAPATTER & SREE
KISSEN MAHAPATTER 1 W R, 62

2 ————— Act IX of 1871 sch II

the period of limitation begins to run is the date of the adoption or (at the option of the plaintiff) the

LIMITATION ACT, 1877—continued.

in possession can plead "I am to your knowledge or to the knowledge of your predecessor in title in possession as a person alleged to have been validly adopted by the widow, on whose death you claim possession," then the case is governed by art. 114. *Per* TYNDALE, J.—(1) Art. 114 of sch. II of the Limitation Act applies to every suit where the validity of the defendant's adoption is the substantial question in dispute, whether such question is raised by the plaintiff in the first instance or arises in consequence of defendant setting up his own adoption as a bar to the plaintiff's success. (2) Art. 141 applies to the ordinary simple case of a reversioner where the validity of the adoption is not the substantial point in dispute, or where the plaintiff can succeed without impugning the validity of the defendant's adoption. *Panagaram v. Manjappa Haldar*, I. L. R., 21 Bom., 159, overruled. *SURENDRAS MURAR v. HANMANT CHAVDO DREHAPANDE* [I. L. R., 24 Bom., 280

[I. L. R., 24 Bom., 280

art. 120 (1871, art. 118: 1859, s. 1, cl. 16).

See ROMNAY REVENUE JURISDICTION ACT, s. 4 . . . I. L. R., 10 Bom., 455

See MAHOMEDAN LAW—ENDOWMENT. [I. L. R., 18 Bom., 401

See MALABAR LAW—JOINT FAMILY. [I. L. R., 15 Mad., 9

See TEST . . . I. L. R., 18 Bom., 551

The general period of limitation of six years under cl. 16 of s. 1 of the Act of 1859 was necessarily much wider in its application than is art. 120 of the present Act, so many more suits being now specially provided for. There was under the Act of 1859 a difference of three years in the period of limitation applicable to contracts registered and that applicable to unregistered contracts which could have been registered, the period being six years for the former, and three years for the latter. Suits on contracts which could not have been registered were considered as cases not specially provided for, and held to be governed by the general limitation of six years.

See ALI SAIB v. SANIYASIRAZ PEDDA BALAITA RASIMHULU . . . 2 Mad., 401

VELLIAPPEN CHETTY v. NOOTOO THEEVAN [2 Ind. Jur., O. S., 11

GURUVI CHETTY v. AYYAPPA NAIDU [2 Mad., 329

BOISTUB CHURN DOSS v. PREM CHAND MITTER [4 W. R., 98

CHUNDER SEIN v. GUJADHUR LALL [1 N. W., 148; Ed. 1873, 230

LESLIE v. PANCHANAN MITTER [6 B. L. R., 668; 15 W. R., O. C., 1

PYARI CHAND MITTER v. FRAZER [6 B. L. R., Ap., 60

S. C. OFFICIAL ASSIGNEE v. FRAZER [14 W. R., O. C., 51

LIMITATION ACT, 1877—continued.

In the present Act the distinction is between "contracts not in writing registered" (art. 115) and "contracts in writing registered" (art. 116).

1. ————— *Contract to cultivate indigo; Suit for damages for breach of—Act X of 1836, s. 3.*—A contract to sow and cultivate indigo provided for liquidated damages payable in a lump sum in the first year in which a breach of contract took place. *Held* that a suit for damages to the extent of the injury sustained brought under s. 3, Act X of 1836, against a party for prevailing upon raiyats who had entered into a lawful contract with the plaintiff, to break that contract, was governed by the six years' limitation provided by cl. 16, s. 1, Act XIV of 1859. *MAHOMED KAZEM CHOWDHRY v. FORBES* . . . 5 W. R., 277

MAHOMED KAZEM v. FORBES . . . 8 W. R., 257

FORBES v. PERTAB SINGH DOOGUR 7 W. R., 401

2. ————— *Suit for declaratory decrees.*—The general period of six years extended to suits in which a declaratory decree and nothing more was sought—*Per* MELVILLE, J. *MORU BIN PATLAJI v. GOPAL BIN SATU* . . . I. L. R., 2 Bom., 120

NANABAI HARIDAS, J., in the same case, decided, however, that it would not apply where the declaration sought was of a right in immovable property.

See also *DOLHUN JANKER KOER v. LALL BEHAREE ROY* . . . 19 W. R., 32

It was also held not to apply to a suit for a declaratory decree as to the erroneousness of a Magistrate's order as to possession under the Criminal Procedure Code. *MEGHRAJ SINGH v. RASHIDNABEE SINGH* . . . 17 W. R., 281

UNDHOON SINGH v. CHUTTERDHAREE SINGH [9 W. R., 480

3. ————— *Suit for declaration of title—Possession.*—Limitation will not apply to a claim for a declaration of title, where the plaintiff is in possession of the land regarding which the declaration is required. *PUREE JAN KHATOON v. BYKUNT CHUNDER CHUCKERBUTTY* . . . 7 W. R., 96

4. ————— *Suit for declaration of title to, and possession in, immovable property—Limitation—Act XV of 1877 (Indian Limitation Act), sch. II, arts. 120, 144.*—A suit for a declaration of right to, and of actual possession in immovable property is governed by the limitation prescribed by art. 120 of the second schedule to the Indian Limitation Act, 1877. *Morabin Pallaji v. Gopal bin Satu*, I. L. R., 2 Bom., 120; *Durga v. Haidar Ali*, I. L. R., 7 All., 167; *Bhikaji Baji v. Pandu*, I. L. R., 19 Bom., 48; and *Mahomed Riasat Ali v. Hasin Bannu*, I. L. R., 21 Calc., 157, referred to. The judgment of *OLDFIELD, J.*, in *Debi Prasad v. Jafar Ali*, I. L. R., 3 All., 40, not followed. *LEGGE v. RAMDARAN SINGH* I. L. R., 20 All., 35

The general limitation of six years was held under the Act of 1859 not to apply to divorce suits. *HAY v. GORDON* . . . 10 B. L. R., 301; 18 W. R., 480

LIMITATION ACT, 1877—continued

a claim for the proprietary right by inheritance brought by the nearest bandhu, or cognate heir of the deceased, the defendant in possession set up his adoption by the widow under her husband's authority

LIMITATION ACT, 1877—continued.

Ramray, I L R 13 Bom., 160 *Finnayama v. Manjaya Hebbar*, I L R 21 Bom 159 and *Hari Lal Prantal v Bai Renu* I L R, 21 Bom., 376, referred to *JAGANNATH PRASAD GUPTA v RANJIT SINGH* I L R, 25 Calc., 354

13 ———— *Suit for possession of immovable property on a declaration that an adoption is invalid*—Art 138 sch II of the Limitation Act does not apply to a suit for possession of immovable property though it may be necessary for the plaintiff to prove the invalidity of an adoption *Jagannath Prasad Gupta v Ranjit Singh*, I L R 25 Calc 354 referred to *RAM CHANDRA MUKERJEE v RANJIT SINGH*

[I L R, 27 Calc., 242
4 C W N, 405

14 ———— *Suit to recover possession of immovable property by setting aside adoption*—An adoption was made by M a Hindu widow, to her husband J in 1854 when the plaintiff's father the then nearest reversionary heir to J, was alive and the adopted son B got actual possession of the property left by J, on the 14th April 1877, under a deed of gift executed by M. M died on the 6th February 1883, and B was succeeded by his son, the present defendant. The plaintiff's father died on the 15th October 1875 and the plaintiff attained his majority on the 28th July 1894 having been born on the 29th July 1873. The plaintiff brought the present suit against the defendant on the 28th January 1895 for the recovery of the properties left by J as being his nearest reversionary heir. *Held*

15 ———— and arts 119 and 141—*Suit by reversioner for a declaration that adoption*

adopted son was not a son of the year

11. ———— *Suit for possession by*

AMMAL v SAMINATHA GURUKAL

[I L R, 20 Mad., 40

12 ———— *Suit for possession of*

to whose adopted son the said properties originally belonged, the defence was that the suit was barred by limitation under art 119 sch II of the Limitation Act. *Held* that art 119 of sch II applies only

Myline I L R, 14 Calc., 401 *Basdeo v Gopal*, I L R, 8 All., 644 *Ganga Sahu v Lakhru Singh*, I L R, 9 All., 253 *Nathu Singh v Golap Singh*, I L R, 17 All., 167, *Padayarao v*

LIMITATION ACT, 1877—continued.

balance from the persons and other properties of the mortgagors. It was further agreed that the principal and interest secured by the bond should be repaid in the month of March 1882 (January-February 1876). In a suit instituted on the 9th October 1882 upon the mortgage to recover the amount due by the sale of the mortgaged property, and the balance, if any, from the persons of the mortgagors. *Held* that the bond in question provided for two remedies in one suit, and did not contemplate a second suit being instituted to recover the balance from the persons of the mortgagors in the event of the first remedy against the mortgaged property proving insufficient to pay the debt in full, and consequently that the cause of action against the persons of the mortgagors accrued upon the date on which the mortgage-money became due; and as the suit was instituted more than six years after that date, the plaintiff's claim was barred by limitation, so far as the personal liability of the mortgagors was concerned. *MILLER v. BUNGA NATH MOTICK*. **I. L. R., 12 Calc., 389**

See CHATTERJEE MAL v. THAKUR

[I. L. R., 20 All., 512]

and *KAMALA KANT SEN v. APUL BASKAT*

[I. L. R., 27 Calc., 180]

14. ———— *Suit to recover non-judicial officer—Karnam.*—The plaintiff's adoptive father was dismissed from the office of karnam on the 4th of April 1862, and the plaintiff was appointed in his stead on the 29th April 1865. On the 25th September 1865, the plaintiff was dismissed and the second defendant appointed. The present suit for recovery of the office and land attached was filed on 21st September 1877. *Held*, on the authority of *Tammirazu Ravaruzi v. Pantina Narzial, 6 Mad., 301*, that the suit was barred, not having been brought within six years from the 25th September 1865. *Kallelsangji Jaxwatsangji v. Dessai Kallianraji Hekurntraji, L. R., 1 I. A., 34*, discussed. *VENKATASUBBARAMAYYA v. SUBAYYA*

[I. L. R., 2 Mad., 283]

15. ———— *Suit to oust a shebait from office the appointment to which is made by nomination.*—A suit to oust a shebait from his office, the appointment to which has been made by nomination, is one for which no period of limitation is specially provided, and is therefore governed by art. 120 of sch. II of the Limitation Act. *JAGAN NATH DAS v. BIRNHADRA DAS*. **I. L. R., 19 Calc., 776**

16. ———— *Time from which period of limitation begins to run—Mortgage by conditional sale.*—A mortgagee under a deed of mortgage by conditional sale obtained a final order for foreclosure under Regulation XVII of 1806 in December 1875. He then sued to have the conditional sale declared absolute and for possession of the mortgaged property, obtaining a decree for the relief sought in April 1881. In a suit for pre-emption in respect of the mortgage, *Held*, with reference to art. 120, sch. II of the Limitation Act, which was applicable to the case, that the pre-emptor's full right to impeach the sale had not accrued until the mortgagee had obtained the decree of April 1881 declaring the conditional

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sale absolute and giving him possession. *Rasik Lal v. Gajraj Singh, I. L. R., 4 All., 314*, and *Prag Chaudhry v. Bhajan Chaudhri, I. L. R., 4 All., 291*, referred to. *UDIT SINGH v. PADARATH SINGH*

[I. L. R., 8 All., 54]

17. ———— *Share of undivided mehal—Conditional sale.*—The limitation applicable to a suit to enforce a right of pre-emption in respect of a conditional sale of a share of an undivided mehal is that contained in art. 120, sch. II of Act XV of 1877, viz., six years. *NATH PRASAD v. RAM PALTAN RAM*. **I. L. R., 4 All., 218**

ASHUK ALI v. MATHURA KANDU

[I. L. R., 5 All., 187]

18. ———— *Mortgage by conditional sale—Right to sue.*—The limitation for a suit to enforce a right of pre-emption in respect of a mortgage by conditional sale is that provided by No. 120, sch. II of Act XV of 1877,—that is to say, six years. *Nath Prasad v. Ram Paltan Ram, I. L. R., 4 All., 218*, followed; and where the mortgagee by conditional sale is not in possession under the mortgage, and after foreclosure has to sue for possession, the right to sue to enforce a right of pre-emption accrues when he obtains a decree for possession. *RASIK LAL v. GAJRAJ SINGH*. **I. L. R., 4 All., 414**

19. ———— *Suit for pre-emption—Rival pre-emptor impleaded as defendant.*—Two suits, to enforce the right of pre-emption in respect of a particular sale having been instituted, the plaintiff in the one first instituted was added as a defendant to the other. *Held* that, as regards him, the second suit constituted a claim by one pre-emptor against another for determination of the question whether the plaintiff or the defendant had the better right to pre-empt the property, which was a claim essentially declaratory in its nature; and there being no specific provision for such a claim in the Limitation Act, it was governed by art. 120 of that Act, and the right to sue accrued when the first suit was instituted. *DURGA v. HAIDAR ALI*. **I. L. R., 7 All., 167**

20. ———— *Beng. Reg. No. XVII of 1806, ss. 7, 8—Mortgage by conditional sale—Foreclosure—Pre-emption, Suit for.*—Where a mortgage by conditional sale had been duly foreclosed in accordance with the procedure laid down in ss. 7 and 8 of Regulation XVII of 1806, and at the expiration of the year of grace a portion of the mortgage-money remained unpaid, *Held* in a suit for pre-emption of the mortgaged property that the title of the conditional vendee became absolute on the expiration of the year of grace, and that the plaintiff's right of pre-emption accrued and limitation began to run against him from the expiration of such year of grace. *Forbes v. Ameroonissa Begum, 10 Moore's I. A., 340*, distinguished. *Raisuddin Chowdhry v. Khodu Newaz Chowdhry, 12 C. L. R., 479*; *Jaikaran Rai v. Ganga Dhari Rai, I. L. R., 3 All., 175*; *Ameer Ali v. Bhabo Soonduree Debia, 6 W. R., 116*; *Ajoodhya Pooree v. Schun Lal, 7 W. R., 428*; *Jeorakhun Singh v. Hookum Singh, 3 Agra, 358*; *Buddree Doss v. Durga Parshad, 2 N. W., 254*;

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5 ———— *Suit for abatement of rent*
Suit for apportionment of rent—Beng. Act
VIII of 1869 s 19—In 1877 certain batwara pro-
 ceedings were terminated and the amount of land
 held by the plaintiff in the portion of the estate

than he actually did in the defendants pleaded that
 the suit was barred by limitation as being brought

must be taken to be six years and not one year
 DOORGA PRESHAD v GHOSITA GORIA

[I. L. R., 11 Cal., 284]

6 ———— *Suit for the apportionment*
of assessment on land—In a suit by the holder of
 one share against the holders of other shares in
 assessed
 assessed
 ed for
 years
 barred
 by limitation s 120 was not applicable to such a
 suit ANANDA RAZU v VIJAYANNA

[I. L. R., 15 Mad., 492]

8. ———— *Suit to recover compensa-*
tion money wrongfully drawn out of Collectorate—
 A Hindu widow granted without legal necessity
 a mokurari lease of certain mouzabs portion of
 her husband's estate to B. During B's possession

LIMITATION ACT, 1877—continued

Collectorate. While this suit was still pending B,
 in March 1872 drew the compensation on money out of
 the Collectorate. The heirs after obtaining a decree
 against B for possession of the mouzabs on the 13th

years had elapsed & the money had been paid out
 by B—art 118 and not art. 60 of sch II of the
 Limitation Act (IX of 1871) applying to the case
 NUND LALL BOSE v ABOO MAHOMED

[I. L. R., 5 Cal., 597 5 C. L. R., 45]

9 ———— and art 62—*Suit for com-*
ensation for land wrongfully withdrawn by person
representing himself as owner—Where the compen-
 sation money awarded by Government for land ac-
 quired by them had been withdrawn by a tenant repre-

TER KRISTO MITTER v DIVENDRA NARAIN ROY

[3 C. W. N., 202]

10 ———— *Recovery of money depo-*
sited in Government treasury—The period of limi-
 tation for recovery of moneys deposited in a Government
 treasury the equivalent whereof was to be returned
 does not exceed 2 years SHEORAJ SINGH v COL-
 LECTOR OF MORADABAD 2 N. W., 379

11

began to run not from the date of his dismissal but
 from the time when the account of charges due
 against the deposit was made and sent in to him.
 UPENDRA LAL MUKHOPADHYA v COLLECTOR OF
 RAJSHAHYE I. L. R., 13 Cal., 113.

12. ———— *Suit to recover deductions*
from deposit of revenue to prevent sale—The six
 years' period of limitation applies to a suit to recover

13. ———— *Suit on account of*
recovery amount by sale of property—Liability
of mortgagee—Case of mortgagee, dated 12th March 1872
 February 1872, it was provided that if the mort-
 gagee should fail to pay the mortgage money
 according to the terms of the mortgage, the mortgagee
 immediately mortgage a sum not exceeding the
 due by sale of the mortgaged property as the
 proceeds of such sale should be applied to
 discharge the debt, the mortgagee was bound to

LIMITATION ACT, 1877—continued.

of 1859), s. 246, and (Act X of 1877) ss. 97-371.—The defendants attached certain property, which the plaintiffs alleged belonged to them. The plaintiffs preferred a claim to the property under s. 246 of Act VIII of 1859; this claim was disallowed on the 15th August 1877. In June 1878 the plaintiffs brought a suit to establish their title to the property attached, and for confirmation of possession. Pending this suit, the principal defendant died, and the plaintiffs applied for an order to substitute certain persons as defendants. The Court thereupon directed the issue of a summons on the defendants proposed by the plaintiffs to appear and defend the suit; but the plaintiffs failing to pay the costs of the service of this summons, the suit was dismissed on the 14th March 1879. On the 4th March 1880 the plaintiffs again brought a suit to establish their title to the same property and for confirmation of possession. *Held* that the order of the 15th August 1877 not being an order passed under s. 253 of Act X of 1877, art. 11 of sch. II of Act XV of 1877 did not apply, but that art. 120 of sch. II was applicable. *BISSASSUR BHUGUT v. MURLI SAHU*

[I. L. R., 9 Calc., 163: 11 C. L. R., 409]

See GOPAL CHUNDER MITTER v. MOHESH CHUNDER BORAI

[I. L. R., 9 Calc., 230: 12 C. L. R., 139]

30. ————— *Suit after release from attachment.*—*A* and *B*, in execution of a decree obtained on the 16th January 1877 by them against *C* for rent, obtained possession of certain property. *D*, whose husband was originally tenant of the property, had sold her interest in it, obtained a mortgage from her vendee upon it, and subsequently, in execution of a decree, dated 12th January 1877, on the mortgage, attached the property, but the attachment was released on the 14th April 1877 at the instance of *A* and *B*. *D* thereupon transferred her decree to the plaintiff, who again attached the property, but the attachment was again refused. The plaintiff then sued on the 18th March 1880 to have it declared that the decree of the 14th January 1877 was collusive, and that he was entitled to sell the property under the mortgage decree of 12th January 1877. *Held* that the suit was governed not by art. 11, but by art. 120, of sch. II of the Limitation Act, and that the suit was not barred. *BROJO MOHUN BHUTTO v. RADHIKA PROSUNNO CHUNDER*

[13 C. L. R., 139]

31. ————— and art. 61.—*Money which plaintiff was obliged to pay in consequence of acts of defendants.*—On the 29th May 1873 one *T* drew from the hands of a shroff a sum of money which had been deposited by him in the name and to the credit of a third person. On the death of such third person, his heirs sued the shroff to recover the sum deposited, and on the 30th January 1878 obtained a decree, in satisfaction of which the shroff paid the decretal money into Court on the 15th January 1883. On the 5th February 1884 the shroff sued *T*, the heirs of the third party and another person (who owned to having received some of the money from *T*), to recover the sum he had been compelled to pay under the decree of 1878. *Held*

LIMITATION ACT, 1877—continued.

that the plaintiff's cause of action arose at the time when he actually paid down the money on the 15th January 1883, and that the suit therefore was not barred by limitation. *TORAB ALI KHAN v. NIL-RUTTUN LAL*

I. L. R., 13 Calc., 155

32. ————— *Express trust—Administration suit—Executor—Suit for an account against an executor or his representative.*—*R* died in 1865, leaving a will, of which his nephews *P* and *S* were the executors. His will provided that after payment of all debts, etc., the residue of his property should remain in the hands of the executors, who were "to maintain the family in the same manner as I used to maintain the family in my house." After the death of both the executors, the residue was to be apportioned among the children of his nephews in equal shares. On the death of the testator, *P* took possession of the estate, and died on the 10th January 1876. *S* remained passive until the 27th August 1884, when he took out probate of *R*'s will. On the 23rd January 1885, he filed the present suit against the defendant as widow and administratrix of *P*, praying for an account of the estate of *R* that had come to the hands of *P*, and also for an account of the estate of *P*. The plaintiff contended that *R*'s estate came into the hands of *P* as a trustee; that the suit was to recover the property for the purposes of the trust, and that s. 10 of the Limitation Act (XV of 1877) applied. The defendant alleged that all the moneys belonging to *R*'s estate, which had come into the hands of *P*, had been expended in paying *R*'s debts, and that there was no residue left for the purposes of the trusts of the will, and she contended that the suit was barred by limitation. *Held* that the suit was barred by art. 120 of sch. II of the Limitation Act (XV of 1877), being primarily not a suit to follow trust property in the hands of a representative of a trustee, but really to ascertain whether any trust remained to be administered after the testator's debts and funeral expenses had been paid. No breach of trust was alleged. The suit was merely for an account against the executor or his representative. To such a suit s. 10 of the Limitation Act does not apply. *SHAPURJI NOWROJI POCHAJI v. BHIKAJI*

I. L. R., 10 Bom., 242

33. ————— *Company, Winding up—Liquidator—Suit by liquidator for calls—Period of limitation applicable to suit by liquidator for calls different from that applicable to suit by company itself.*—The directors of the *P* company made a call of ₹100 per share upon its shareholders on the 1st October 1882. On the 8th March 1886, the company was ordered to be wound up by the Court, and an official liquidator was appointed. On the 17th March 1886, the official liquidator filed this suit against the defendant, who was a holder of twenty-one shares in the company, to recover (along with other calls) the amount of the said call of 1st October 1882. As to this part of the claim, the defendant pleaded limitation. *Held* that the suit being brought, not by the company, but by the liquidator, art. 120 of the Limitation Act (XV of 1877) applied, and

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Tara Kumar v. Mangri Meeah, 7 B L. R. 4p, 114, *Harari Ram v. Shankar Dasi*, I. L. R. 8 All. 770, *Tawakkul Rai v. Lachman Rai*, 1 L. R. 6 All. 344 and *Ajib Nath v. Mathura Prasad*, I L. R. 11 All. 164, referred to *Prag Chaubey*

21. ———— *Suit for pre-emption—Mortgage by conditional sale—Transfer of Pro-*

22. ———— and art. 73—*Promissory*

being governed, not by art 73, but by art 120, of sch. II of the Limitation Act, 1877 *SANJIVI c. EBRAPA* . . . I. L. R. 6 Mad. 280

23. ———— *Suit for refund of money*

24. ———— *Suit for money paid under*

appeal and the present defendant had the note sold in execution and drew out of the proceeds a sum for meane profits for subsequent years, but an appeal was preferred in the execution proceedings to the High Court, which set aside the execution so far as concerned the meane profits for the years subsequent to that to which the original decree related. The

LIMITATION ACT, 1877—continued

present plaintiff thereupon attached and sold the vil-

the decree out of Court In second appeal, however, the High Court, on 26th September 1881, reversed the decree of the District Court whereupon the present plaintiff applied for restitution under Civil Procedure Code, s 583 which application was ultimately disallowed The present suit was brought to recover the amount to which that application related Held that the Limitation Act, sch II,

25. ———— *Contribution, Suit for—Liability created by ikramnama—Suit upon a covenant in the ikramnama for money paid—Cause of action—A suit upon a covenant in an ikramnama*

BRUTTACHARJEE v. NOBO KUMAR BRUTTACHARJEE
[I. L. R., 26 Calc., 241]

26. ———— *Suit for recovery of instalment of professional tax—Towns Improvement Act, Madras (III of 1871).—A suit for recovery of*

27. ———— *Claim for removal of trees—Art. 120, Act IV of 1857*

28. ———— *Suit for removal of trees—Art. 120, Act IV of 1857*

29. ———— *Suit for removal of trees—Art. 120, Act IV of 1857*

LIMITATION ACT, 1877—continued.

the proprietor of a certain mohalla, sued *K*, who had purchased a house situated in the mohalla at a sale in the execution of his own decree, for one-fourth of the purchase-money, founding his claim upon an ancient custom obtaining in the mohalla, under which the proprietor thereof received one-fourth of the purchase-money of a house situated therein, whether sold privately or in the execution of a decree. *Held* that the period of limitation applicable to such a suit was that prescribed by art. 120, sch. II of Act XV of 1877, and not by art. 62 or by art. 132 of that schedule. *KIRATH CHAND v. GANESH PRASAD*

[I. L. R., 2 All., 358]

38. — and art. 106—*Suit to wind up partnership.*—*T, B, R, and W*, the owners of a certain estate in equal shares, in 1863 entered into a partnership for "the cultivation of tea and other products" upon such estate. In 1864 *H, E, and I* joined the firm. In 1870 *H* died, and in 1871 *T* purchased his share and those of *E* and *I*, and in 1873 that of *R*. In 1875 *T* gave the Delhi and London Bank a mortgage, on which they afterwards obtained a decree against him personally, in execution of which his right and interest in the estate were put up for sale on 20th June 1877, and purchased by the Bank, who obtained possession in August 1877. In August 1879, *B* and *W*'s executor sued *T* and the Bank claiming a declaration that they had been partners with *T* in the estate; that if the partnership should be held to be subsisting, it might be dissolved, or that, if it had ceased to exist, the date of its termination might be fixed, and that in either case a liquidator might be appointed. *Held* that the period of limitation applicable to the suit was that provided in art. 120, and not art. 106, Act XV of 1877, but that in either case the suit was within time, as the partnership was dissolved and consequently time began to run not from the death of *H* or the purchase by *T* of the shares of *E* and *I* in 1871, or of *R* in 1873, but in August 1877, when the defendant Bank took possession of the partnership property. *HARRISON v. DELHI AND LONDON BANK*

[I. L. R., 4 All., 437]

39. — and arts. 131, 144—*Adverse possession—Suit for declaration of right to malikana and to set aside order refusing to register names.*—Previous to 1825, dearah *X* accreted to mouzah *Y*, and some time before 1860 the malik of *Y* executed two conveyances in favour of *A* and *B* respectively. In 1860 *A* sued *B* in the Munsif's Court for possession of a share in *X* which *B* claimed under his conveyance. In that suit *A* succeeded on the ground that *B*'s conveyance did not cover the share claimed by him in *X*, but merely covered the share in the mouzah itself, whereas by his conveyance *A* had acquired the right to the share in *X* which he claimed. In 1866 the Collector refused to recognize *B*'s right to malikana payable in respect of the share in *X* which had been the subject of the suit in 1860, or to register his name in respect thereof, but acknowledge *A*'s right thereto, relying on the decision of the Civil Court in the suit between *A* and *B*. Subsequently *B*'s representatives, *C* and *D*, in 1866, sought to have their names registered in respect of

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the same malikana, but they were opposed by *E*, who alleged that *A* had been acting throughout as his benamidar. The Collector referred the case under s. 55 of Act VII of 1876 to the Civil Court, and the application of *C* and *D* was eventually disallowed. *C* and *D* thereupon, on the 5th November 1880, instituted the present suit against *E* in the Court of the Subordinate Judge, for a declaration of their right to the malikana, and for a reversal of the order refusing to allow their names to be registered in respect thereof. *Held* that the suit was barred by limitation, being governed either by art. 120, 131, or 144 of the Limitation Act (XV of 1877), because—(1) there being no allegation of dispossession, if it were contended that the suit was one for possession of an interest in immoveable property, art. 144 would apply; (2) if it were contended that the suit was for the purpose of establishing a periodically recurring right, pure and simple, art. 131 would apply, and the period must be reckoned from 1866, when the plaintiff was first refused the enjoyment of the right; (3) if, however, it were said to be a suit to establish a periodically recurring right, and something in addition, inasmuch as the right carried with it a right to the property itself, if the parties consented to take a settlement when the time for concluding the next temporary or permanent settlement came, art. 120 must be held to apply. But that, in any event, inasmuch as in the year 1866 the Collector refused to recognize *B*'s right to the malikana, and adverse possession, so far as possession could be taken of such an interest in immoveable property, was then taken by *A*, or in other words by *E*, because it must be taken that the Collector since that date had been holding for *A*, whose right he had then recognized, after refusing to recognize the right claimed by *B*, the present suit, having been instituted in 1880, was equally barred, whichever of the above articles was held to apply. *Rao Karan Singh v. Bakur Ali Khan, L. R., 9 I. A., 99*, referred to and distinguished. *GOPINATH CHOWDHURY v. BHUGWAT PERSHAD*

[I. L. R., 10 Calc., 697]

40. — *Suit for declaration that the defendant is a mere benamidar for the plaintiff—Suit for relief on ground of fraud—Limitation Act (XV of 1877), sch. II, art. 95.*—A suit brought by *A* to obtain a declaration that a decree originally obtained by *B* against *C* and another, which had been purchased in the name of *D*, had really been purchased by the plaintiff for his own benefit, the cause of action alleged being the wrongful execution of the decree by *D*, is not a suit for relief on the ground of fraud within art. 95 of sch. II of the Limitation Act, but is governed by art. 120 of that schedule. Under the circumstances, the suit was held not to be barred by limitation. *GOUR MOHUN GOUMI v. DINOSHATI KARMOKAR*

I. L. R., 25 Calc., 49
[2 C. W. N., 76]

41. — *Suit on written instrument which could not have been registered—Limitation Act, 1859, s. 1, cls. 9, 10, 16.*—The period of limitation applicable under Act XIV of 1859 to suits upon written instruments which could not have been registered under the law in force at the time of

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action.—D died leaving him surviving a widow and a daughter who was plaintiff's mother. Defendant No. 2 obtained a decree against the widow, and in execution put up D's property to sale. Defendants 3, 4, and 5 purchased the property and took possession in 1869. In 1883 the plaintiff sued as D's reversionary heirs for a declaration that they were entitled to the property in dispute on the widow's death, alleging that the decree, in execution of which the property was sold, was a collusive and fraudulent decree, and that they were not bound by the sale in execution. They further alleged that the cause of action arose in 1879 when their mother died. Held that the suit was barred by limitation. The cause of action giving any reversioner the right to sue for a declaration was that given to the plaintiff's mother in 1869, both by the sale and the dispossession, and it was not revived in favour of the plaintiffs on her death in 1879. All right to sue for a declaration was therefore barred in 1875 under art. 120 of sch. II of the Limitation Act (XV of 1877). *CHHAGANRAM ASTIKRAM v. BAI MOTIGARRI*

[I. L. R., 14 Bom., 512]

51. ——— Suit by reversioners to

set aside alienation by Hindu widow.—Similar suit barred by limitation as against a prior reversioner. Effect of, on suit by subsequent reversioner.—Where there are several reversioners entitled successively under the Hindu law to an estate held by a Hindu widow, no one such reversioner can be held to claim through or derive his title from another, even if that other happens to be his father, but he derives his title from the last full owner. If therefore the right of the nearest reversioner for the time being to contest an alienation or an adoption by the Hindu widow is allowed to become barred by limitation as against him, this will not bar the similar rights of the subsequent reversioners. *Beni Prasad v. Hardai Bibi, unreported; Rampal Rai v. Tula Kauri, I. L. R., 6 All., 116; Jumoona Dassya Choudhrani v. Bamasonderai Chowdhani, I. L. R., 1 Cal., 289; I. L. R., 3 I. A., 72; and Isri Dutt Keer v. Hansuttii Keerani, I. L. R., 10 Cal., 324; I. L. R., 10 I. A., 150, referred to. Chhaganram Astikram v. Bai Motigarr, I. L. R., 14 Bom., 512, and Pershad Singh v. Chedee Lall, 15 W. R., 1, dissented from. BHAGWANTA v. SETHI . I. L. R., 22 All., 33*

52. ——— Suit for a declaration of

heirship.—Accrual of the cause of action.—Denial of title.—A sued for a declaration that she was the daughter of B. who died in 1870. On B's death, his kulkarni vatan was attached, and C was appointed to officiate on behalf of Government. In 1892 A applied for a certificate of heirship to B, with a view to get her name entered as a vatanar in place of her deceased father's. C opposed her application, denying that she was the daughter and heiress of B. Her application being rejected, A filed the present suit against C in 1877, to obtain a declaration that she was the daughter and heiress of B. The Court of first instance granted the declaration sought. The Appellate Court rejected the claim as barred under art. 120 of the Limitation Act (XV of 1877), holding that time should be computed from the date of B's

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death. Held that A's cause of action accrued not on B's death, but on the denial of her status by C in the certificate proceedings. The suit, having been brought within six years from that time, was not barred under art. 120 of the Limitation Act. *TEJABAI v. VINAYAK KRISHNA KULKARNI . I. L. R., 15 Bom., 422*

53. ——— Suit by a decree-holder

against the sons of a deceased judgment-debtor whose property had passed to them.—A decree was passed against a Hindu for money dishonestly retained by him from the plaintiff's family to which he was accountable in respect of it. The judgment-debtor having died, the decree-holder sought to attach in execution property of the family which had passed into the hands of his sons by survivorship. The sons objected that such property was not liable to attachment, and the decree-holder was referred to a regular suit. He now brought a suit against the sons. Held that the suit was governed by art. 120 of the Limitation Act, and that time began to run for the purposes of limitation from the death of the father. *NATASAYAN v. PONTSAYAM . I. L. R., 16 Mad., 99*

54. ——— Suit by the purchaser in

execution-sale to recover the purchase-money.—The plaintiff purchased land sold in execution of a decree in favour of the defendant, but was subsequently evicted by the son of the judgment-debtor. He now sued in 1889 to recover the purchase-money paid by him on the ground that the judgment-debtor possessed no saleable interest in the property in question. It appeared that in 1888 the son of the judgment-debtor had obtained a decree against the plaintiff and others, declaring that she (the judgment-debtor) had no saleable interest in the property. Held that Limitation Act, sch. II, art. 120, contained the rule of limitation applicable to the suit, which was accordingly not time-barred, since the cause of action did not arise until 1888. *NIJANANTA v. IVANSABIB . I. L. R., 16 Mad., 361*

55. ——— Right of suit—Continuing

right.—Suit for construction of will.—Suit for declaratory decree.—In a suit by reversioners after the death of the widow of a testator for the construction of his will and codicil, and for a declaration of the plaintiff's rights, Held that the suit was not barred by lapse of time. A suit for declaratory relief of such a nature cannot be held to be barred so long as the right to the property in respect of which the declaration is sought is a subsisting right, and the plaintiff has a subsisting right as reversioners, so long as the widow was alive. The right to bring such a suit is a continuing right; therefore, and may be claimed within the statutory period from the time when the plaintiffs become entitled to the consequential relief. The present suit, having been brought within six years from the death of the widow, was within time. *CHITKUN LAL ROY v. LOHIT MOHAN ROY . I. L. R., 20 Cal., 808*

56. ——— and s. 10 and art. 62

—Act XI of 1859, s. 61.—Suit to recover surplus sale-proceeds of a sale for arrears of Government revenue.—In a suit brought for the residue of the sale-proceeds of an estate sold under the provisions of

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execution of such instruments was 87 years under
cl 18 of s 1 of the said Act VENKATACHALAM
v VENKATAYYA I L R. 11 Mad, 207

42 ————— Act XIII of 1859 s 2—
Claim to recover an advance—Act XIII of 1859

43 ————— Suit for removal of trees
in
well
or
by
having a right to use property for a specified
purpose perverts it to other purposes and a suit
has to be instituted for any relief in respect of
any injurious consequences arising from such
perversion such a suit will be governed by

44. ————— and art 10—Maha
medan law—Pre-emptory Conditional sale—Right

allowed from that time DIGAMBER MISSEER v RAM
LAL ROY I L R, 14 Calc, 761

45 ————— and art 91—Suit for
declaration of title—Incidental relief—Setting
aside
to a
the
school
by a
is it
plaintiff PACHAMUTHU v CHINNAPPAN
[I L R, 10 Mad, 213]

46 ————— Khots Act (Bom Act I
of 1880) s 16—Settlement—Register Preparation of
of—Entry in the register—On 25th April 1888 the

LIMITATION ACT, 1877—continued

Survey officer after determining the co-sharers in a
khots village prepared the settlement register under
s 16 of Bombay Act I of 1880 in which he entered

defendants who denied plaintiff's title and was
finally rejected by the Collector on 25th November
1892 In 1896 plaintiffs filed the present suit to

names were entered in the register as mortgagees
DATTATRAYA GOPAL v RAMCHANDRA VISHNU

[I L R 24 Bom, 533]

47 ————— and art 127 Suit for

art 120 and must be decreed PIRATHI PAL v
JOWAHIR SINGH I L R 14 Calc, 493

[L R, 14 I A, 37]

48 ————— Suit for perpetual injunction

49 ————— Suit for mutation of

50 ————— Suit by a reversioner for
a declaration of his title to property sold in execu-
tion of a decree against a Hindu widow—Cause of

LIMITATION ACT, 1877—continued.

suit was governed by Limitation Act, sch. II, art. 120, and not by art. 62, and that the plaintiff was entitled to recover without regard to the terms of Transfer of Property Act, s. 135. **KRISHNAN v. PERACHAN** . I. L. R., 15 Mad., 382

64. ——— and art. 91.—*Suit for declaration of right by setting aside kanom mortgage.*—The reversionary heirs to a stanom in Malabar sued in 1889 for a declaration that a kanom executed in 1881 by the first defendant, the present holder of the stanom, in favour of the second defendant, was not binding on them or on the stanom. *Held* that the suit was barred under Limitation Act, 1877, sch. II, art. 120. **PURAKEN v. PARVATHI** [I. L. R., 16 Mad., 138

65. ——— and art. 110.—*Suit to recover customary dues payable on account of a chattram—Suit for rent.*—In a suit by the District Board in charge of a chattram to recover a certain sum as the arrears of various merais, being customary dues payable by the defendants for the benefit of the chattram on account of lands held by them, the defendants among other defences relied upon a plea of limitation. *Held* that the suit was governed by Limitation Act, sch. II, art. 120, and not by art. 110 as a suit for rent. **VENKATAVARAGA v. DISTRICT BOARD OF TANJORE** [I. L. R., 16 Mad., 305

66. ——— and s. 131.—*Periodically recurring right—Denial of right.*—In a suit brought in 1889 by a landholder against the Secretary of State for a declaration of his right against Government to have certain remissions made in the sum to which he was annually assessed, no consequential relief was sought, and it appeared that the plaintiff's claim for the remission had been made in 1878 and had been refused by Government. *Held* that Limitation Act, 1877, sch. II, art. 120, and not art. 131, applied to the case, and the suit was barred by limitation. **BALAKRISHNA v. SECRETARY OF STATE FOR INDIA** [I. L. R., 16 Mad., 294

67. ——— and art. 144.—*Emoluments of hereditary office—Interest in immovable property.*—A suit to recover a sum of money due by custom as an emolument of an hereditary office is not one for the possession of an interest in immovable property. In 1888 a sum of money became payable, as marriage dues, to the holder of certain offices connected with a temple. Upon a suit being brought more than six years thereafter, namely in 1895, to recover the amount, it was objected that the claim was barred by limitation. *Held* that such a claim is governed by art. 120 of sch. II to the Limitation Act, and must, in consequence, be enforced within six years of the accrual of the right. **RATHNA MUDALIAR v. TIRUVENKATA CHARIAR** [I. L. R., 22 Mad., 351

68. ——— *Liability of son for father's debts—Suit for money against sons of a deceased judgment-debtor—Decree for money against father to be discharged by instalments—Previous execution proceedings—Form of decree.*—A personal

LIMITATION ACT, 1877—continued.

decree on a mortgage was passed against a Hindu (the mortgagor) and his two sons on the 19th October 1877. The decree provided for payment of the secured debt in various instalments by May 1895. The mortgagor died in 1883, having discharged part of the debt. The decree-holder having attached certain family property in execution, the mortgagor's two younger sons, who had not been born at the date of the above decree, objected that their shares were not liable to attachment. This objection prevailed, the Court expressing the opinion that the matter in controversy should be determined in a regular suit. The other defendants in the suit of 1877 had both died in the interval, one of them leaving infant sons. The decree-holder (in whose sole name the mortgage stood) now sued the sons of the mortgagor and their infant nephews in 1891 for the payment out of the family property of all the unpaid instalments. *Held* that the period of limitation applicable to the suit was six years, and that time began to run for the purposes of limitation from the date when each instalment would have become due from the deceased judgment-debtor; and that the plaintiff was entitled to a decree for payment out of the family property of all such instalments as would have so become due at the date of the suit, and for a declaration only as to the subsequent instalments. **RAMAYYA v. VENKATARATNAM** . I. L. R., 17 Mad., 122

69. ——— *Suit to set aside an instrument—Suit for maintenance of possession in joint family property—Limitation Act, 1877, sch. II, art. 91.*—The plaintiff sued for maintenance of possession in certain joint family property by cancellation, so far as his interest was concerned, of a certain deed of sale by which another co-parcener in the same property had purported to convey the whole to a stranger. *Held* that the limitation applicable to such a suit was that prescribed by s. 120 of sch. II of the Limitation Act, 1877, and not that prescribed by art. 91. **Sobha Pandey v. Sahodra Bibi**, I. L. R., 5 All., 322, referred to. **Janki Kunwar v. Ajit Singh**, I. L. R., 15 Calc., 58, distinguished. **DIN DIAK v. HAR NARAIN** . I. L. R., 16 All., 73

70. ——— and arts. 91, 95.—*Suit by auction-purchaser of mortgaged property to cancel a perpetual lease granted by the mortgagor in contravention of a covenant in the mortgage.*—During the continuance of a mortgage which contained a covenant against alienation of the mortgaged property, the mortgagor made a perpetual lease of that property. The mortgagee brought a suit on his mortgage, and, having obtained a decree, put the mortgaged property up to sale. The auction-purchaser of the mortgaged property, on becoming aware of the existence of the perpetual lease, sued for its cancellation and for a declaration that the defendant had no right to interfere with, or obstruct the plaintiff in respect of, the property in question. *Held* that the limitation applicable to such suit was that prescribed by art. 120 of the second schedule to the Indian Limitation Act, 1877, and not that prescribed by art. 91 or art. 95. The main prayer of the plaint was for a decree declaring and establishing the plaintiff's title, and the prayer for cancellation of the lease could be

LIMITATION ACT, 1877—continued

Act XI of 1859 against the Secretary of State for

the defendant in trust for a specific purpose within

OF STATE FOR INDIA v GURU PROSHAD DHUR
 ABDUL BARI v SECRETARY OF STATE FOR INDIA
 SECRETARY OF STATE FOR INDIA v RAMBULLUB DAS
 CHOWDREY I L R, 20 Calc, 51

See SECRETARY OF STATE FOR INDIA v FAZAL ALI
 I L R, 18 Calc, 234

57 ————— and s 10 and arts

58 ————— and s 23 and arts 34

LIMITATION ACT, 1877—continued

60 ————— and arts 49 and 123
 —Sut by Mahomedan widow to have declared her
 right by local custom to life interest in estate of
 her husband—Sut for distributive share of pro-
 perty—Sut for movable property wrongfully taken
 —To a sut by a Mahomedan widow against the
 brother of her deceased husband to have declared her
 right to possess for life the estate of the latter in
 accordance with a proved local custom art 120
 sch II Limitation Act (XV of 1877) was held
 applicable it not being a sut for a distributive share
 of property within the meaning of art 123 of the

[L R., 20 I A, 155]

61 ————— Sut to recover from the
 widow of a deceased Mahomedan money realized by
 her on account of a debt due to the deceased—
 Held that a sut brought by the other heirs to

schedule to the Indian Limitation Act 1877 *Mahomed Riasat Ali v Hasin Banu* I L R 21 Calc 15/
Sithamma v Narayana I L R 12 Mad, 487 and *Kundun Lal v Bansidhar* I L R 3 All 170 referred to *UMARDARAZ ALI KHAN v WILAT ALI KHAN* I L R., 19 All, 169

62 ————— and art 62—Sut by
 purchaser of decree to recover money of deceased
 judgment debtor in the hands of his agent—One
 A P having certain moneys lying at his credit in
 Calcutta empowered A L to receive the same and

the plaintiffs who sued to obtain the same from

63 ————— and art 62—Money
 received for plaintiff's use—Sut for which no

the land was taken up by Government under the

LIMITATION ACT, 1877—continued.

proceedings were pronounced to be irregular. The plaintiff thereupon, in the year 1877, filed the present suit on the strength of his decree of 1848. *Held* that the period of limitation applicable was that of twelve years from the date of the decree (Act IX of 1871, sch. II, art. 121), but that the decree should be viewed as analogous to an instalment decree and made as against the defendant in 1867,—down to which time the proceeds were regularly realized,—because it then, on his father's death, became first operative against him. In the case of a decree payable by instalments, as the command of the Judge prescribes a term for the performance of the several parts of his order, it is to be construed as becoming a judgment for purposes of limitation as to each instalment only on the day when payment is to be made. **SAKHARAM DIKSHIT v. GANESH SATHE** . . . I. L. R., 3 Bom., 193

2. ———— *Suit on barred judgment-debt—Suit for administration—Mortgage decree—Transfer to High Court for execution—Application for execution by sale—Civil Procedure Code (1882), ss. 227, 230, and 244—Transfer of Property Act (IV of 1882), ss. 67, 89, and 99—Limitation Act (XV of 1877), sch. II, arts. 179 and 180.*—On the 29th September 1882, a decree was obtained against the defendant's husband in a suit on a mortgage by the latter dated the 6th April 1880. On the 27th July 1883, an order was made for transfer of the decree to the High Court for execution. On the 8th April 1886, the mortgagee applied to the High Court for execution by attachment of the mortgaged properties, and in the same year an order for attachment was made. The mortgagee died in April 1892, and on the 20th August 1894 the plaintiff (his widow and administratrix) applied to the High Court for an order absolute for sale of the mortgaged properties under s. 89 of the Transfer of Property Act. On the 5th January 1895, the application was refused on the ground that the mortgaged properties were outside the territorial jurisdiction of the High Court. The plaintiff then instituted the present suit, in which she sought (*inter alia*) administration of the estate of the mortgagor (who had died before the mortgage suit was filed), and asked for the sale of such properties as might be found subject to such mortgage. *Held* (affirming the decision of SALE, J.) that, whether the plaintiff sued on the original debt or on the decree of the 29th September 1882, the suit was barred by limitation. *Held* also that, even apart from any question of limitation, the suit was not maintainable by reason of the provisions of ss. 230 and 244 of the Civil Procedure Code, the questions arising in the suit being such as should have been determined in execution of the decree, and not by a separate suit. **JOGENAYA DASSI v. THACKOMONT DASSI** . . . I. L. R., 24 Cal., 473

art. 123 (1871, art. 122; 1859, s. 1, cl. 11).

1. ———— *Suit under will for sum as legacy.*—Where a sum assigned to sons was, by the terms of the will, to be regarded as a legacy, and not as a charge on the estate for their maintenance,—*Held* that cl. 11, s. 1, Act XIV of 1859, was the limitation applicable to suits under the will

LIMITATION ACT, 1877—continued.

for recovery of the sum due as a legacy. **NANA. NARAIN RAO v. RAMA NUND** . . . 2 Agra, 171.

2. ———— *Suit for legacy.*—R by his will gave the whole of his property to his brothers, making a specific provision of Rs. 4,000 for one of his daughters (the mother of the plaintiffs), which was to remain as amanut in the family treasury, yielding her interest if and till she gave birth to a male child, when she should also have 200 bighas of land. Shortly after this, the testator died and the elder of the plaintiffs was born. The mother having since died without drawing the principal or taken the allotment of land, and the manager of the family estate having refused to give the plaintiffs their due, they sued to recover what was left to their mother. *Held* that this was a suit for legacy, and that cl. 11, s. 1, applied so far as the claim for money was concerned; and that the cause of action to the plaintiffs occurred at the time of the birth of the elder plaintiff, when his mother became immediately entitled to the principal sum of money and to the land. **PROSSONO CHUNDER ROY CHOWDRY v. GYAN CHUNDER BOSE** . . . 13 W. R., 354

3. ———— *Will—Suit for share of testator's moveable property.*—Art. 122 of Act IX of 1871 applies to a suit for a share of the residue of a testator's moveable property disposed of by his will. **TREPOORASOONDERY DOSSET v. DEBENDRONATH TAGORE** . . . I. L. R., 2 Cal., 45

4. ———— *Suit for legacy against representative of testator.*—Art. 123 of the Limitation Act only applies to cases in which the property sought to be recovered is not only a legacy, but is also sought to be recovered as such from a person who is bound by law to pay such legacy, either because he is the executor of the will or otherwise represents the estate of the testator. **ISSUR CHUNDER DOSS v. JUGGUT CHUNDER SHAHA** [I. L. R., 9 Cal., 79

5. ———— and art. 120—*Executor-de son tort—Suit for a share of Government promissory notes by an heir against one falsely professing to hold them under a will.*—Suit in 1887 by a daughter to recover her share of Government promissory notes being stridhanam of her mother who died in 1880. The property in question had been in the possession of a son of the deceased since her death. He claimed the property under a will, but the will was set aside by the Court as false in 1884. *Held* that Limitation Act, sch. II, art. 123, is applicable only to cases in which the defendant lawfully represents the estate of the deceased, and that the suit was accordingly barred by limitation. **SITHAMMA v. NARAYANA** . . . I. L. R., 12 Mad., 487

6. ———— *Suit for legacy under a will—Cause of action—Amendment of plaint.*—A suit was brought in May 1894 by a legatee claiming under the will of a testator, who died on the 8th December 1881, against the executors of the will. The plaint did not specifically ask for payment of the legacy or for ascertainment of the share in the residue due to the plaintiff, but set forth certain

LIMITATION ACT, 1877—continued

treated as merely subsidiary to the main relief asked—

MANGO LAL. . . . 1 L. R., 22 All., 90

directly the property is conveyed to the trustees
COWASJI NOWROJI POCHKHANAWALLA v RUSTOMJI
DOSSABHOY SETNA . . . I. L. R., 20 Bom., 511

72. ———— Exclusive occupation of
joint lands by some of the co owners—Suit by the
Some of the

CHAND DUTT I. L. R., 23 Cal., 199

Board of Revenue for the N
1 All., 444, referred to Raghu Nath Prasad v
Girdhari Das, Weekly Notes, All (1893), 65,
dissented from SHAM CHAND v BAHADUR UPADHIA
[I. L. R., 18 All., 430]

74. ———— Decree for rent against
tenants jointly—Execution against one defendant—

75. ———— Suit to set aside sale in
execution of certificate under Public Demands Re-

LIMITATION ACT, 1877—continued.

SARODA CHARAN BANDOPADHAYA v KISTA MORUX
BHATTACHARJEE 1 C W N., 516

——— art 121 (1871, art 119; 1859, s. 7).

1. ———— Sale for arrears of rent of
patai tenure—Upon the sale of a patai taluk for

2. ———— Encroachment by a tres-
passer—Incumbrance—Adverse possession—Pur-

Karmi Khan v Brogo Nath Dass, I. L. R., 22

3. ———— Act IX of 1871, art. 120

art. 122 (1871, art 121; 1859, s. 1,
cl. II).

LIMITATION. ACT, 1877—continued.

art. 125 (1871, art. 124).

See PERSHAD SINGH v. CHEDEE LALL
[15 W. R., 1

2. ————— *Hindu widow—Suit to set aside alienation and to restrain waste.*—K, a Hindu widow, assigned one moiety of her share in her husband's estate to H S, in consideration that H S should conduct and pay all costs of a suit which was then to be instituted against her husband's brothers, of whom B C, the present plaintiff, was one, to recover the share to which she was entitled, and also to pay her maintenance in the meantime. The assignment was dated 24th December 1864.

LIMITATION ACT, 1877—continued

recover his legacy from the defendants personally and that therefore the suit fell within art 123 sch II of the Limitation Act which gives a period of twelve years from the date the legacy became due and that being one year after the testator's death (or the 8th December 1882) the suit was in time *CURAJEE PRSTONJEE BOTTIWALLA v DADABHAI EDULJEE* I L R., 19 Mad, 425

7 ———— *Non claim of share under an intestacy*—One M N W died intestate in 1837 leaving a widow (M) and two sons, M obtained letters of administration and until her death in 1897 remained in sole possession and enjoyment of her

8 ———— *Suit by a Mapilla widow for her share in her husband's property*—The widow of a Mapilla who had died intestate more than fourteen years before suit sued to recover a one sixteenth share of the property left by him and his brother. *Held* that although the parties were Mapillas the suit was governed by art 123 of the Limitation Act and was accordingly barred. *KASMI v ATISHANAMA* I L R., 15 Mad, 80

9 ———— *Suit to recover estate of lowance*—In 1864 N B the owner of a share in a deshpande estate died childless and intestate. A

LIMITATION ACT, 1877—continued

(*inter alia*) that the suit was barred. The Court of first instance awarded the plaintiff's claim for the three years previous to the suit and rejected the rest of the claim. The defendants appealed to the

art 124 (1871, art 123)

Suits of the nature described in this article were under Act XIV of 1859 held to be governed by cl 12 of s 1 the general limitation of twelve years

any land yet being by that law classed as immovable property should be held to be immovable property within the meaning of cl 12 of s 1 of the Limitation Act 1859. *KRISHNABHAI BIR HIRA GANGE v KAPABHAI BIN MAHALBHAI*

[6 Bom, A C, 137]

BALYANTRAY alias TATIAJI BAPAJI v PURSHO TAM SIDDHESHWAR 9 Bom, 99

In a Madras case however the six years period was held to apply

2 ———— *Office of karnam—Incidental right to land attached to office—Suit*

office was the principal matter of the plaintiff's

3 ———— *Suit for possession of hereditary office and for account—Adverse possession.*—X, the founder of two died in 1795

LIMITATION ACT, 1877—continued.

7. ——— *Suit to compel partition of moveable and immovable property.*—A Hindu of the Southern Maratha country, having two sons undivided from him, died in 1872, leaving a will disposing of ancestral estate substantially in favour of his second son, excluding the elder, who claimed his share in this suit. In 1861, a suit brought by this elder son against his father and brother to obtain a declaration of his right to a partition of the ancestral estate, was dismissed on the ground that he had no right in his father's lifetime to compel a partition of the moveables; and that, as to the immovables, the claim failed, because they were situate beyond the jurisdiction of the Court. *Held* that the suit was not barred under the Limitation Act (XIV of 1859), s. 1, cl. 13. As to the immovables, setting aside the fact that the plaintiff had remained in possession of one of the houses of the family which had been treated by the father as continuing to be part of the joint property, the decision of 1861, based as to the immovables on the absence of jurisdiction to declare partition of them, caused this part of the claim to fall under the provisions of Act XIV of 1859, s. 14. As to the moveables: assuming that they could, on the question of limitation, be treated as distinct from the immovables, and that no payment had been made within twelve years before this suit by the ancestral banking firm to the plaintiff, the adjudication of 1861, whether in law correct or incorrect, had been that the elder son could not assert his rights in the moveables until his father's death. The defendant in this suit, who had taken the benefit of that judgment, could not now insist that it did not suspend the running of limitation on the ground that his brothers might have appealed from it if erroneous. So far, also, as the father's interest was concerned, the succession only opened on his death. **LAKSHMAN DADA NAIK v. RAMCHANDRA DADA NAIK**. I. L. R., 5 Bom., 48 [L. R., 7 I. A., 181]

8. ——— *Suit to recover share of joint property inherited.*—Cl. 13, s. 1 of Act (XIV of 1859), was not applicable to a suit to recover a share of joint property to which the plaintiff claimed to be entitled by inheritance. **DINONATH RANA v. RUPENDUNNISSA BIRER**. 20 W. R., 270

9. ——— *Suit to enforce right to share in joint property.*—Suits to enforce the right to share in any property, on the ground that it is joint family property, must be brought within twelve years, exclusive of the period during which the property was under attachment by Government and neither party was in possession. **SHINDORIAY v. NAIKJIRAY**. 10 Bom., 228

10. ——— *Suit by adopted son for share of ancestral estate—Cause of action.*—As against an adopted son suing for his share of the ancestral estate, the law of limitation does not begin to run until the allotment of such share has been demanded and refused. **AYYAY MEPPANAR v. NILAVATCHI AMMAL**. 1 Mad., 46

11. ——— *Suit of share of family property—Exclusion from possession.*—In a suit to enforce the right to share in property on the ground

LIMITATION ACT, 1877—continued.

that it was joint family property, —*Held* that, upon the construction of cl. 13, s. 1, Act XIV of 1859, the claimant, in order that the statute shall be a bar, must have been entirely out of possession and excluded from possession by those against whom he claims. **GOVINDUN PILLAI v. CHIDAMBARAM PILLAI**

[3 Mad., 93]

See **RAJESWARA GAJAPATY NARAINA DFO MAHARAJULUNGARU v. VIJAYATAPAH REDDY GAJAPATY NARAINA DFO MAHARAJULUNGARU**

[5 Mad., 31]

and **SUBBAYYA v. RAJESWARA SASTRULU**

[4 Mad., 354]

12. ——— *Question as to exclusive possession—Onus of proof—Refusal to allow share.*—The question of fact whether there has been such exclusive possession or enjoyment must be decided upon the evidence in each case, and may be satisfactorily proved, although there may be no evidence of an express refusal to allow plaintiff any part of the benefits of the joint property. **SUBBAYYA v. RAJESWARA SASTRULU**

4 Mad., 354

JARAOO v. LAKEERA

3 Agra, 133

RAJOO SINGH v. GUNESHMONOFF BUNOMOFF

[15 W. R., 400]

13. ——— *Suit for share of joint property.*—A got a decree for possession, but before she obtained possession, B obtained a decree declaring him jointly entitled with A to a particular share of the same property. *Held* that, when A got possession, that possession inured to the benefit of B as well as to herself, and B's cause of action in a suit against A in respect of the same property dated from the time when A obtained possession, and a suit was not barred if brought within twelve years of that time. **GOOROO CHURN SINGH v. GOVERNMENT OF BOMBAY**

[13 W. R., 185]

14. ——— *Suit for share of joint property.*—If by arrangement the shares of certain co-sharers are left in the possession of other co-sharers during the period of a current settlement, the cause of action to the sharers whose shares have been so left for profits accrues only when the settlement expires. **TOOLAT RAM v. NAHUR SINGH**

3 Agra, 271

15. ——— *Suit for share of joint property—Cause of action.*—When parties are living together in community and in joint possession of property, no cause of action arises as to it until their recovery of his share will be barred if possessed by the other, and limitation runs from the date of such dispossession. **JABER CHUNDER SARDAR v. BHUYER CHUNDER SARDAR**

[10 W. R., 314]

16. ——— *Succession—Suit for partition.*—Where the bulk of the estate of a Hindu family is held and managed by a single member of the family, and the other members receive and enjoy part of the lands as *dar*, the personal *dar* of the bulk of the estate by the *dar* owner is not a *dar* under the bar, under the Limitation Act (XIV of 1859), s. 1, cl. 13, a suit by the others for partition, unless they are

LIMITATION ACT, 1877—continued.

3. ———— *Alienation—Decree in a collusive suit against a Hindu widow—Held that the action of a Hindu widow, in carrying a collusive*

See CHUNDER KANTH ROY v PEARY MOHUN ROY
[1 Ind. Jur., O S, 21
Marsh., 33; 1 Hay, 69]

WOOMA CHURN BANERJEE v HARADHUN MO-
ZOOMDAR 1 W. R., 347

and SHINATH GANGOPADHYA v MAHES CHANDRA
ROY 4 B. L. R., F. B., 3

——— art. 128 (1871, art. 125)—Cause of

See NOWRUT RAM v DURBAZER SINGH
[2 Agra, 145]

——— art. 127 (1871, art. 127; 1859, s 1,
cl 13).

See ONUS OF PROOF—LIMITATION AND
ADVERSE POSSESSION.

[L. L. R., 16 Bom., 513]

S. 1, cl. 13, of the Act of 1859 applied to Mahome-
dan as well as Hindu families KHYROONISSA v
SABHOONISSA KHATOON 5 W. R., 238

LIMITATION ACT, 1877—continued.

as this article does, the corresponding article of the
Act of 1871 was specially applicable only to Hindus.

1. ———— *Suit for share in family
dwelling.—A claim by a member of a joint Hindu*

KRISHNADHUN CHOWDHRY v HUR COOMARY
CHOWDHRAIN 25 W. R., 37

2. ———— *Mortgage by one member of
Hindu family—Surrender of equity of redemption.
—Act XIV of 1859, s 1, cl 13, was intended to apply
to suits between members of a joint family, not to
a case where a mortgage having been made by one
member on behalf of all to a stranger, that member
afterwards, against the will of his co-partners releases
the equity of redemption LADHANATH DAS v.
ELLIOTT 6 B. L. R., 530*

S. C. RADHANATH DAS v GISHBORNE & Co.
[15 W. R., P. C., 24
14 Moore's I A., 1]

3. ———— *Suit to establish right to
share profits of watan.—In a suit to establish a right
to share in a watan and to recover a portion of the
profits thereof for seven years,—Held that the case
was governed as to limitation, by cl 13 and not cl 16,
of s 1, and that arrears for seven years were there-
fore properly awarded GUNDO ANANDEAY v.
KRISHNARAY GOBIND 4 Bom., A C, 55*

4. ———— *Suit to enforce right to*

5. ———— *Right of son claiming*

LIMITATION ACT, 1877—continued.

October 1877, the period of limitation must be computed under art. 127, and not under art. 143, of sch. II of Act IX of 1871. *KALI KISHORE ROY v. DHUNUNJOY ROY* . . . I. L. R., 3 Calc., 228

HANSJI CHHIBA v. VALABH CHHIBA
[I. L. R., 7 Bom., 297]

Under Act IX of 1871, the cause of action arose from the time when the plaintiff demanded, and was refused, his share; consequently it was then necessary to make that allegation. *HANSJI CHHIBA v. VALABH CHHIBA* . . . I. L. R., 7 Bom., 297

26. ————— *Exclusion from share of joint property.*—Art. 127, sch. II of Act IX of 1871 presupposes the existence of joint family property, and that there has been an exclusion from participation in the enjoyment of such property. *Semble*—The word “excluded” in that article implies previous inclusion. *SARODA SOONDURY DOSSEE v. DORA MOYEE DOSSEE* . . . I. L. R., 5 Calc., 938

27. ————— *Joint property—Evidence.*—Before a plaintiff can bring his case within art. 127 of sch. II of the Limitation Act, 1877, it is incumbent on him to show that the property in which he seeks to recover a share is “joint property.” *OBHOY CHURN GHOSE v. GOBIND CHUNDER DEY*
[I. L. R., 9 Calc., 237]

28. ————— *Suit by person claiming a share in joint family property.*—The word “person” mentioned in art. 127 of sch. II of the Limitation Act means some person claiming a right to share in joint family property upon the ground that he is a member of the family to which the property belongs. *Radhanath Doss v. Gisborne, 14 Moore's I. A., 1: 15 W. R., P. C., 24; Ram Lakhi v. Ambica Charan Sen, I. L. R., 11 Calc., 680; and Horendra Chundra Gupta Roy v. Aunordi Mundul, I. L. R., 14 Calc., 544, relied on. KARTICK CHUNDER GHUTTUCK v. SARODA SUNDURI DEBI*
[I. L. R., 18 Calc., 642]

29. ————— *Application of article—Stranger holding property belonging to joint family.*—Art. 127 of sch. II of the Limitation Act (XV of 1877) does not apply except in cases between members of a joint family. It does not apply to the case of a stranger to the family holding property which originally belonged to the family. As to him, the ordinary rule of limitation (art. 144) applies. *BHAVRAO v. RAKHMUN* . . . I. L. R., 23 Bom., 137

30. ————— *Claim to property as daughter's son.*—The provisions of art. 127 of sch. II of the Limitation Act do not apply to a person who claims to inherit property as a daughter's son. *MOTHURA NATH DUTT v. BORKANT NATH DUTT. PEARL MOHUN DUTT v. BORKANT NATH DUTT*
[II C. L. R., 312]

31. ————— *Suit for possession and partition—Acquiescence in alienation—Exclusion from share.*—In a suit to obtain a share by partition of a joint family property, the interest of the plaintiff's father having been sold in execution of a decree, limitation is to be computed from the time when

LIMITATION ACT, 1877—continued.

exclusion from his share first becomes known to the plaintiff. *ISSURDUTT SINGH v. IBRAHIM*
[I. L. R., 8 Calc., 653]

32. ————— *Exclusion from share—Suit for partition.*—Where in a suit for partition a District Judge held the plaintiff's claim barred on the ground that the defendant had been in possession of the property in dispute for more than fifteen years without any claim having been made by the plaintiff, —*Held that under the Limitation Act (XV of 1877), art. 127, time would not run against the plaintiff until his exclusion (if he was excluded) from the property had become known to him. HABIB v. MAHUTI* . . . I. L. R., 6 Bom., 741

33. ————— *Exclusion from joint property.*—A collateral member of a Hindu family, alleging it to be joint; claimed his share of ancestral property in Oudh, part of which formed a talukh inherited for a considerable time past by the eldest son, who, taking the whole of it, had given maintenance to the other members. This taking was entered in the first and second of the lists made under the provisions of the Oudh Estates Act (I of 1869), and as to it there was no ground of claim. But with respect to the savings, accumulations, and investments made from the income and proceeds of the talukh before the confiscation and restoration of Oudh lands in 1858, the contention was that each member was entitled to his share, and that, by the presumption in respect of a joint family, the burden was on the talukhdar to prove that there were no savings or accumulations made otherwise than out of the talukh and before the confiscation. *Held that, if it were assumed that the family was for some purposes undivided, still this was not the case of an ordinary undivided Hindu family, and that, in such a case as this, the presumption must depend on somewhat special circumstances. However, this case must be decided on the distinct ground that, as the claimant had been excluded from his share, if he had one, for more than twelve years, he knowing of this exclusion, the law of limitation enacted in Act XV of 1877, sch. II, art. 127, was applicable, and the claim was barred by lapse of time. RAGHUNATH BALI v. MAHARAJ BALI*
[I. L. R., 11 Calc., 777; I. R., 12 I. A., 112]

34. ————— *Aliyasantana law—Exclusion from joint family property.*—In a suit in which the plaintiffs sought declarations that they were members of an undivided Aliyasantana family with the defendants, that certain property belonged to the family, and that plaintiff No. 1, the senior member of the family, was entitled to have the lands registered in his name, the defendants denied the allegations in the plaint, and pleaded that the suit for declarations only was not maintainable, and that it was barred by limitation. It was found that the plaintiffs had separated themselves from the defendants more than twelve years before suit. *Held that art. 127 applied to the case, and that the plaintiffs, having separated themselves from the defendants, had for more than twelve years been to their own knowledge excluded from the*

LIMITATION ACT, 1877—continued

circumstances to show that they accepted the s r lands in lieu of the shares that could have been allotted to them on a partition. The case of *Appovier v Rama Subba Aiyar* 11 Moore s I A 70 approved. **RUNJEET SINGH v GURJAT SINGH** L R, 11 A, 9

17 ————— *Receipt of payments for*

of 1859 **GOBIND CHUNDER BAGCHEE v KRIPA MOTER DABER** 11 W R, 338

18 ————— *Rent collected by one member of Mahomedan family living jointly—Even if a member of a Mahomedan family collects the rents and profits of the family property his pos*

19 ————— *Joint property Suit for share of—Onus probandi—A suit to enforce a right to a share of joint family property must be*

property was joint family property **Gossain Doss Kocovoo v Siro Koomaher Debia**

[12 B L R, 219 19 W R, 192

UMBKA CHURN SHET v BHAGGOBUTTY CHURN SHET 3 W R, 173

BYDDONATH OJHA v GOPAL MAL 6 W R, 170

MURKHADE MOOKERJEE v TEENCOWREE DOSSEER [6 W R 170

KRISTO CHUNDER BURMO SURMAH v MOHESH CHUNDER BURMO SURMAH 23 W R, 381

20 ————— *Suit for share of joint ancestral property—A Hindu died in 1840 leaving him surviving seven sons who after their father's death entered into joint possession of certain im*

or management of the property within twelve years before the commencement of the suit. Held that the suit was barred by limitation under cl 13 s 1 Act XIV of 1859. **UMA SUNDARI DAS v DWARKANATH ROY** 2 B L R, A C, 284

LIMITATION ACT, 1877—continued

S C WOOMA SOONDURER DOSSEER v DWARKANATH ROY 11 W R 72

AMITRAY BIN YESHVANTRAY DESHMUKH v ANYABA ABASI DESHMUKH 5 Bom A C, 50

21 ————— *Entry of names in register—Held that the plaintiffs suit was barred by lapse of time they having received nothing from the property, a share of which they claimed for a period beyond that prescribed by cl 13 s 1 Act XIV of 1859. The fact that the plaintiffs had a manifest right by inheritance and that their names had been entered in the revenue register as proprietors is not equivalent to proof of payment to and receipt by them of any profit on account of their share.* **KHORUN SINGH v BEHABER LALL** 3 Agra, 85

MAKSOOD ALI KHAN v GHAZERODDIN KHAN [3 Agra 158

22 ————— *Suit to enforce share of joint property—Proof of payments—In ruling that*

prior to the date of the institution of the suit by the

23 ————— *Payments for joint share*

—Proof of payment is not necessary to bring a case within cl 13 s 1 Act XIV of 1859 but the limitation on therein prescribed will apply to the case of a person entitled to a share in property and simply enjoying the property with the co-sharers there being no division of money or any payment at all made between them. **BRUJONUR PAUL v HURO SOONDURER DEBER** 17 W R, 530

24 —————

that neither the plaintiff nor her predecessor was in possession within twelve years. It was found that the two brothers had lived in the same mess the

CHUNDER MONER DEBIA v MEHAJAN BIBE

[22 W R, 185

25 ————— *Suit by Hindu excluded from joint family property—In a suit by a Hindu excluded from joint family property to enforce a right to a share therein, brought before the 1st of*

LIMITATION ACT, 1877—continued

joint family property and that their suit to enforce a right to share therein was barred *Mahalinga v. Mariyamma*, 1 L R, 12 Mad, 462 distinguished *Muttakke v. Thimmappa* 1 L R, 15 Mad, 186

35 ———— *Suit for share of joint property—Exclusion—Adverse possession*—In a suit for a share of undivided property from which the plaintiff had been out of possession admittedly for thirty five years—*Held* that the suit was not barred by limitation, as the possession of the share in question by the defendant since 1845 had not been a possession of it as their own property to the exclusion of the plaintiffs or their father *Nilo Ramchandra v. Gobind Ballal*

[1 L R, 10 Bom, 24

38 ———— *Limitation Act 1859, s 1, cl 13—Hindu law, Maintenance—Refusal of*

—In a suit for maintenance—*Held* that the refusal of the defendant to maintain the plaintiff was not a bar to the suit—*Sav-
Batta* 1 L R, 12 Mad, 347

37 ———— *Suit for share of property alleged to be joint—Limitation Act, 1859, s 1, cl 13—Property in possession of a managing member—Suit for partition and possession of an*

1856 *Held* that the suit was barred by limitation *Khatija v. Ismail*

[1 L R, 12 Mad, 380

38 ———— *Suit for possession by purchaser from sharer in joint family—Art 127 of sch II of Act XV of 1877 does not apply to a suit where the plaintiff is a stranger, who has purchased a share in joint family property from one of the members thereof* *Horendra Chundra Gupta Roy v. Anwaruddin*

[1 L R, 14 Calc, 544

39 ———— *Hindu law—Joint family—Joint estate—Partition—Portion of estate re-*

—*Held* that the portion of the estate reserved for the plaintiff was not a bar to the suit—*The plaintiffs su-
plaintiffs su-
joint family property left undivided on the occasion of a general partition which had taken place about thirty five years before the suit. The defendant had since then been in sole possession and enjoyment of the house in dispute. The Subordinate Judge*

LIMITATION ACT, 1877—continued

dismissed the suit as barred by limitation on the ground that the plaintiffs had failed to prove participation in possession or enjoyment within twelve years. On appeal, the Assistant Judge held that, as no share had been demanded or refused, the defendant's possession was not adverse to the plaintiffs, and as the house in dispute had been admittedly reserved from partition, art 127 of the Limitation Act (XV of 1877) did not apply. He therefore reversed the decree of the Subordinate Judge, and remanded the case for re-trial on the merits. On appeal to the High Court, *Held* that the suit was barred. The fact that the house in question had admittedly remained undivided did not prevent the operation of the Limitation Act, and art 127 of Act XV of 1877 applied. That article applies equally to a portion of joint family property left undivided as to the whole estate, and a twelve years' exclusion, known to the excluded sharer, binds him in the one case as in the other. What would bar the operation of the article in question would be a reserve of a part of the joint estate from partition and a possession of that part on conceded to and taken by one of the sharers as the common property of himself and the other sharers *Ram Chandra Narayan v. Narayan Mahadev*

[1 L R, 11 Bom, 216

See Tatta v. Anaji

[1 L R, 11 Bom, 220 note

and *Vithoba v. Narayan*

— [1 L R, 11 Bom, 221 note.

40 ———— *Hindu law—Partition—Property excluded from partition—The members of a joint Hindu family made a partition of family property in 1877, reserving undivided however, certain land and the capital and assets of their family business which remained under the control and in the possession of one of them viz, the present first defendant. The plaintiff who was a member of the family demanded his share in the undivided property on the 4th of March 1887, and the defendants refused to give effect to his claim. The plaintiff in 1892 sued for his share in the property. *Held* that the property in question was co-parcenary property notwithstanding the transaction of 1877, and that the plaintiff's suit was not barred by limitation *Muthusami Mudaliar v. Nallakulantha Mudaliar**

[1 L R, 18 Mad, 418

41 ———— *Exclusion from share in a portion of joint property—The fact that the plaintiffs were not excluded from their share in part of the joint property does not prevent art 127, sch II of the Limitation Act (XV of 1877), from operating in respect of another part from which they had been excluded to their knowledge* *Vishnu Ramchandra v. Ganesh Appaji Chaudhari*

1 L R, 31 Bom, 325

42 ———— *and art. 144—Partition effected without taking into account a minor co-parcener—Invalid partition—Adverse possession—Exclusion from joint property—Three brothers,*

LIMITATION ACT, 1877—continued.

In 1881 for a share of joint family estate, the question whether the plaintiff's right to sue was barred by limitation under Act XIV of 1859, s. 1, cl. 13, depended on whether there had been any participation of profits between the plaintiff's father and the defendants, who with him were co-descendants from a common ancestor, after 1837 down to which year the family was certainly joint. If in 1871 the period of limitation expired, the Act IX of that year and the later Act of 1877 were referred to; for, if they altered the law, they would not revive the right of suit. Upon the evidence it was found that, whatever might have been the father's intention when he settled his share in the village in 1837, the effect of what had been done was to establish, on both sides, that in due time the right of suit had become barred under the first Limitation Act. *ABRAHAM OPIYAN v. SUBRAMANIAM*. L. L. R., 12 Mad., 28

(L. R., 15 I. A., 107

and art. 131—*Peri v.*

55. *Suit for share of gift of pension. Effect of assignment of share in inheritance.* A pension of the estate described in Act XIII of 1871 (Pensions Act), s. 7, cl. (2), was drawn by a Mahomedan, in whose name alone it was recorded in the Government registers, for himself and the other members of his family, up to the time of his death, received the share from him. Shortly before he died, he executed a deed of gift in favour of his wife, which purported to assign to her the whole pension. No mutation of name was effected in the Government registers, but the deed of gift and the assignment in respect of which the pension had originally been granted were handed over to the donee. After the death of the donor, one of his sisters brought a suit against his widow to establish her right (i) to receive the share in the pension which she had inherited from her father and received up to her brother's death; and (ii) as heir to her brother's share in the share which he had inherited. In defence, it was pleaded (*inter alia*) that the suit was barred by limitation. *Held* that it was doubtful whether in such a case and as between such parties the Limitation Act would be applicable at all; but that, assuming it to be so, either art. 127 or art. 131 of the second schedule should be applied, and the plaintiff having received her share within twelve years, the suit was brought in time. *SAHIB-UN-NISSA BIKI v. HARIZA BIKI, HARIZA BIKI v. SAHIB-UN-NISSA BIKI*. I. L. R., 9 All., 213

art. 128 (1871, art. 128; 1859, s. 1, cl. 13).

1. *Suit to recover maintenance.*—S. 1, cl. 13, Act XIV of 1859, applied to suits for the recovery of maintenance, whether the right to receive maintenance arose out of the general law or out of a specific deed granting such maintenance. *BAMASOONDERY DEBEA v. SHAMASOONDERY DEBEA*. [W. R., 1864, 13

2. *Suit for maintenance.*—Cl. 13, s. 1, Act XIV of 1859, did not apply to a suit for maintenance, when the right to receive such maintenance was not a charge on the estate of a deceased person, but on the estate of living persons.

LIMITATION ACT, 1877—continued.

BISODE LALL CHATTERJEE v. LUCKHER MONEE DEBIA. 4 W. R., 84

3. *Suit for maintenance.*—

In a suit for maintenance, the cause of action ordinarily arises at the time when the maintenance having become necessary is refused by the party from whom it is claimed. S. 1, cl. 13, Act XIV of 1859, did not apply to all suits for the recovery of maintenance brought by a Hindu widow against her husband's family, but only to suits in which the plaintiff seeks to have her maintenance made a charge on a particular estate. *TOMIAPPA BHAT v. PANDURANGIAHWA*. 5 Bom., A. C., 130

4. *Suit for maintenance as charge on estate.*—The plaintiff sued the defendants for future and past maintenance and obtained a decree for future maintenance and for arrears of maintenance for seven years. The parties were governed by the Aliyasantana law. It was found by the lower Appellate Court that for twenty years before the suit the plaintiff lived apart from the defendants and the other members of the family, and supported herself without receiving or applying for anything towards her maintenance out of the family property in the possession of the defendants, or obtaining any recognition of the right to maintenance. On special appeal, *Held per SCOTLAND, C.J.*, that, assuming the Aliyasantana law recognizes the right of the plaintiff to enforce separate maintenance as a charge upon the estate, the plaintiff's claim was barred by s. 1, cl. 13, Act XIV of 1859. *Per COLLIER, J.*—It is doubtful whether cl. 13, which applies to cases where the right to receive maintenance is a charge on the inheritance of any estate, applies in a case where the right of the plaintiff is said to exist by reason of her being a co-proprietor with the defendants. If the suit be not within cl. 13, then it was one to recover an interest in immovable property, and was equally barred by cl. 12 of s. 1. *ABRAHAM v. ANNU SHETTATI*. 4 Mad., 137

SUBRAMANIAM MCPHAR v. KALIANI ANMAL

[7 Mad., 226

Suits for maintenance not chargeable on any estate were governed by cl. 16 of s. 1 of the Act of 1859; the cause of action in such cases did not arise until there had been a demand and a refusal. *KATO NILKANTH v. LAKSHMIBAI*. I. L. R., 2 Bom., 637

5. *Hindu widow—Maintenance.*—

With regard to the widow's right to maintenance, a statute of limitation would do much harm if it should force widows to claim their strict rights and commence litigations which, but for the purpose of keeping alive their claim, would not be necessary or desirable. A Hindu, disposing of his estate by will, expressed his hopes that his wives and son would all live amicably together after his death, and would all look upon his eldest son as the head of the family; he then bequeathed the whole of his property to his eldest son, directing him to provide for his (the testator's) widows, and for the other members and dependents of the family, and he declared that he made these provisions with a view to prevent dissensions in the family, and to enable them to live in peace and

LIMITATION ACT, 1877—continued

harmony after his decease. In a suit brought more than sixteen years after the death of the testator by one of his widows against the eldest son to recover maintenance it was pleaded for the defendant that

any estate must be brought within twelve years from the death of the person on whose estate the maintenance is alleged to be a charge. *Held* that the

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tion

6. ———— *Suit for arrears of maintenance*—In suits coming within the operation of

7. ———— and arts 130 and 132—*Suit for arrears of maintenance charged upon immoveable property*—An allowance for the mainte-

8. ———— *Suit for arrears of maintenance*—Suit on decree specifying no date for payment of future maintenance—A Hindu widow obtained a decree in 1876 which provided that she should receive future maintenance annually, at a certain rate but did not specify any date on which it should become due. In 1887 she filed the present suit claiming arrears of maintenance at the rate fixed in the decree of 1876. *Held* that the suit did not lie. *Sablanatha Dikshitar v. Subba Lakshmi Ammal*, 1 L. R. 7 Mad 80, distinguished. *VENKATA v. AIRAMMA* 1 L. R. 12 Mad, 183

— art. 130 (1871, art 130, 1859, s 1, cl 14)

See ONUS OF PROOF—RESUMPTION AND ASSESSMENT 3 W. R., 69, 182

LIMITATION ACT, 1877—continued

Cl 14 of s 1 of the Act of 1859 applied to suits to resume or assess lands held rent free subsequent to the Permanent Settlement 1790. *KRISHNA MOHUN DOSS BUESHER v. JOY KISHEN MOOKERJEE* [3 W. R., 33]

DEHUNPUT SINGH v. BOOSAH SAHOO 4 W. R., 53

1. ———— *Suit for resumption*—Under Act XIV of 1859, a zamindar could not resume land, whether lakhiraj or not held from before 1790. Even an auction purchaser was barred by limitation if the raiyat could prove that the land was in the possession of those through whom he claimed before 1790. *RADHA KISTO MITER v. BHUGWAN CHUNDER BOSE* 1 W. R., 248

SRISTEEDHUR SAMUNT v. ROMANATH ROHIT [6 W. R., 58]

KHELOT CHUNDER GHOSE v. POORNO CHUNDER FOY 2 W. R., 258

2. ———— *Suit for land as part of mal*

See *BARODA KANT ROY v. BOOKMOY MOOKERJEE* [1 W. R., 29]

3. ———— *Suit to recover portion of zamindari granted not in accordance with Mad Reg XXV of 1800*—The appellant a zamindar, sued to recover a portion of the zamindari granted by his grandfather upwards of forty years ago upon the ground that the grant was not made in conformity with the requirements of Regulation XXV of 1802 and that in the absence of the observance of the formalities there prescribed the grant was void. *Held* that more than twelve years having

SITAYAMMA GARU 3 Mad., 67

ALI SAID v. SANTYASIRAZ PENDABALIVARA SIMHULU 3 Mad., 5

See *KRISHNA DEVU GARU v. PAMACHANDRA DEVU MAHARAJULU GARU* 3 Mad., 153

4. ———— *Suit for resumption by darpatindar—Cause of action*—In a suit by a darpatindar for the resumption of land alleged to be held as lakhiraj under an invalid title limitation must be calculated not from the date of the creation of his darpatni title, but from that of possession of the party from whom the patindar originally derived his title. *GUNGARAM CHOWDREY v. HUREE NATH CHOWDREY* 15 W. R., 436

And so if he is an auction purchaser. *BUSSEER GODDEEN v. SHISTERSHAD CHOWDREY* [W. R., 1864, 170]

LIMITATION ACT, 1877—continued.

NIRUNJAN ACHARJEE v. KUNALEE CHURN DASEREE 1 W. R., 197

Or a purchaser from Government: his cause of action dates from the time when the right accrued to the Government. **BENSOO v. AMBERGOODHRY**

[23 W. R., 24

5. ———— *Suit for assessment of rent after resumption of lakhiraj lands.*—A got a decree against B, which declared that certain lands in B's possession, alleged to have been lakhiraj lands from before 1790, were A's mal lands and liable to assessment. More than twelve years after the date of this decree, A sued to assess the lands. *Held* (affirming the decision of **AINSLIE, J.**) that the suit was not barred by the provisions of Act IX of 1871, sch. II, art. 130. **PHOTAP CHUNDER CHOWDHRY v. SHUKHER SOONDARIE DASSEE** 2 C. L. R., 589

6. ———— *Service tenant—Assessment of rent by Settlement officer.*—In a suit against the Talukhdari Settlement officer, who had assessed rent-free land on the ground that it had been granted for service, and that service was no longer required. *Held* that, if the grant was the grant of an office remunerated by the use of land, the right to assess was barred by the possession of a person not claiming under the grant for a longer period than twelve years after the right to resume accrued under Act IX of 1871, s. 29, and art. 130, sch. II. **KEVAL KURRI v. TALUKHDARI SETTLEMENT OFFICER**

[I. L. R., 1 Bom., 588

and arts. 131 and 149—

7. ———— *Resumption and assessment of lakhiraj land.*—Discussion of the law of limitation as applicable to the resumption and assessment of lakhiraj lands. **KOYLASHCHANDRY DASSER v. GOROOMONI DASSER**

[I. L. R., 8 Calc., 230; 10 C. L. R., 41

8. ———— *Suit for assessment of rent on lakhiraj land after decree for resumption.*—Effect of decree as creating or not relationship of landlord and tenant.—The plaintiff brought a suit in 1861 against C for resumption of, and for declaration of his right to assess rent upon, C's lands within his zamindari which C held as lakhiraj. That suit was presumably instituted under Regulation II of 1819, s. 30, which related only to resumption of lakhiraj lands existing prior to 1790, but there was nothing to show conclusively under what law it was instituted, or whether the lakhiraj grant was one subsequent or anterior to 1790. In that suit an *ex-parte* decree was passed in 1863 that "the suit be decreed and the land in dispute be declared to be shukur," i.e., liable to assessment. In a suit brought in 1886 against the representatives of C after serving a notice upon them to pay rent for the land at a certain rate, to assess the land at the rate mentioned in the notice, and for the recovery of rent at that rate, *Held* that the decree of 1863 had not the effect of creating the relationship of landlord and tenant between the parties, and therefore the suit, not having been brought within twelve years from the date of that decree, was barred by art. 130 of the Limitation Act (XV of 1877). **BIR CHUNDER MANIKYA v. RAJMOHEN GOSWAMI**

[I. L. R., 16 Calc., 449

LIMITATION ACT, 1877—continued.

9. ———— *Suit for assessment of rent on lakhiraj land after decree for resumption.*—Effect of decree as creating or not relationship of landlord and tenant.—The plaintiff in 1862 obtained a decree for resumption of land held under an invalid lakhiraj title created before 1790, the decree declaring the land liable to assessment. In a suit brought more than twelve years after the decree against the representatives of the defendant in the suit of 1862 to assess the land, *Held* that the decree of 1862 did not create the relationship of landlord and tenant between the parties, and that the suit was therefore barred under art. 130 of the Limitation Act (XV of 1877). **NIL KOMEL CHUCKERBUTTY v. BIR CHUNDER MANIKYA** I. L. R., 16 Calc., 450 note

——— art. 131 (1871, art. 131).

1. ———— *Cause of action—Suit for turn of worship of an idol.*—The plaintiff sued the defendants for a declaration of his right to a turn of worship of an idol for seven-and-a-half days in each month, alleging that the defendants, who were entitled to another turn, had in 1864 taken adverse possession of the idol and properties belonging to it, and had so deprived him (the plaintiff) of his turn of worship from that time. *Held* that the cause of action did not recur as the turn of worship came round. Such suit fell within the operation of cl. 16, s. 1, Act XIV of 1859. **GAGRI MOHAN CHOWDHRY v. MADAN MOHAN CHOWDHRY**

[6 B. L. R., 352; 15 W. R., 29

2. ———— *Right to exclusive worship of idol—Right to turn of worship.*—In a suit brought in 1875, in which the plaintiff claimed, as heir of her husband, a share in a certain talukh, together with exclusive right of worship of an idol A, and the right to the worship of an idol B, for one-sixth of every year, from the possession and enjoyment of which she alleged she had been dispossessed by the defendants in 1866, *Held* that her claim as to the idol B came under the provision of art. 131 of Act IX of 1871, and was not barred; but as to A, the claim was governed by art. 118 of the same Act, and, not having been preferred within six years, was barred by lapse of time. **ESHAN CHUNDER ROY v. MONMOHINI DASSI** I. L. R., 4 Calc., 683

3. ———— *Worship of idol—Turn of worship—Recurring right.*—A suit for a palla, or right to worship an idol in turn, is a periodically recurring right within the meaning of Act XV of 1877, sch. II, art. 31. **Eshan Chunder Roy v. Monmohini Dassi, I. L. R., 4 Calc., 683**, followed. **GOPKESHEX GOSWAMY v. THAKOORDASS GOSWAMY**

[I. L. R., 8 Calc., 807; 10 C. L. R., 439

4. ———— *Suit to recover burial fees.*—Cause of action.—In a suit to recover burial fees, the right to which occurred whenever a corpse was brought for burial, the period of limitation was held to be twelve years from the date of the first refusal of the enjoyment of the right. **BAHAR SHAH v. PERO SHAH** 24 W. R., 385

5. ———— *Claim for monthly allowance from zamindari—Demand and refusal—Recurring right.*—S, being entitled to a monthly allowance

LIMITATION ACT, 1877—continued

the claim was barred by limitation under cl 13 s 1, Act XIV of 1859, which provides that suits for the recovery of maintenance when the right to receive such maintenance is a charge on the inheritance of

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6. ———— *Suit for arrears of maintenance*—In suits coming within the operation of

the date of such demand and refusal *TIVI v. RAMJI*
[L L R., 3 Bom, 207]

7 ———— and arts 130 and 132—

8 ———— *Suit for payment of obtained and should receive future maintenance annually, at a*

art 130 (1871, art. 130, 1859, s 1, cl 14)

See *ONUS OF PROOF—RESUMPTION AND ASSESSMENT* 3 W R, 60, 182

LIMITATION ACT, 1877—continued

Cl 14 of s 1 of the Act of 1859 applied to suits to resume or assess lands held rent free subsequent to the Permanent Settlement 1790 *KRISHNA MOHUN DOSS BUKSHER v. JOY KISHEN MOOKERJEE*
[3 W R, 33]

DRUNPAT SINGH v. BOOJAH SAKOO 4 W R, 53

1 ———— *Suit for resumption*—Under Act XIV of 1859 a zamindar could not resume land, whether lakhiraj or not held from before 1790. Even an auction purchaser was barred by limitation if the taluqat could prove that the land was in the possession of those through whom he claimed before 1790 *RADHA KISTO MITTE v. BRUGWAY CHUNDER BOSE*
1 W R, 248

SRISTEEDHUR SAMUNT v. ROMANATH ROHITT
[6 W R, 58]

LAKHET CHUNDER GHOSE v. POORNO CHUNDER ROY
2 W R, 258

2 ———— *Suit for land as part of mal tenure—Cause of action*—The cause of action in a suit for land as part of the plaintiff's mal tenure,

See *BARODA KANT ROY v. SOOKMOY MOOKERJEE*
[1 W R, 29]

3 ———— *Suit to recover portion of zamindari granted not in accordance with Mad Reg XVI of 1802*—The appellant a zamindar, sued to recover a portion of the zamindari granted by his grandfather upwards of forty years ago upon the ground that the grant was not made in conformity with the requirements of Regulation XXV of 1802 and that in the absence of the observance of the formalities there prescribed the grant was void. Held that more than twelve years having elapsed since the title accrued to the person under whom the plaintiff derived his right to resume, the appeal should be dismissed. S 1 cl 14 of Act XIV of 1859 considered and applied *SETA LAMA KRISTNA RAYUDAPPA RANGA RAO v. JAGUNTHI SITAYAKMA GARU*
3 Mad, 67

ALI SAIB v. SANTASIRAZ PEDDABALAYARA SIM HULU
3 Mad., 5

See *KRISHNA DEVU GARU v. RAMACHANDRA DEVU MAHARAJULU GARU*
3 Mad., 153

4 ———— *Suit for resumption by darpatidar—Cause of action*—In a suit by a darpatidar for the resumption of land alleged to be held as lakhiraj under an invalid title limitation

And so if he is an auction purchaser. *BUKSHER OODDEEN v. SHIRERSHAD CHOWDHRY*
[W. R., 1864, 170]

LIMITATION ACT, 1877—continued.

is rent under Regulation VIII of 1793; that a cause of action for recovery of arrears of malikana is a recurring cause of action; and that failure to recover arrears for more than twelve years would not bar the right to recover for such period as has not been barred by the statute, cl. 16, s. 1, Act XIV of 1859,—that is, for a period of six years. *Held* (by KEMP, J.) that the suit was barred, as no malikana had been paid for more than twelve years. *Bhuli Singh v. Nehmu Behu*, 3 Ap., 102 : 12 W. R., 46. *Held* on appeal that a suit for the recovery of malikana was barred by limitation if the malikana had not been received for a period of twelve years. *BHULI SINGH v. NEHMU BEHU*

[4 B. L. R., A. C., 29 : 10 W. R., 302

BADURUL HUQ v. COURT OF WARDS

[12 W. R., 498

CHUMMUN v. OM KOOLSOOM . . . 13 W. R., 465

Contra, *GOVERNMENT v. RHOOF NARAIN SINGH*

[2 W. R., 162

HEERANUND SAHOO v. OZEERUN . . . 6 W. R., 151

Reversed, however, on review, in *OZEERUN v. HEERANUND SAHOO* . . . 7 W. R., 336

where it was held that the twelve years' limitation applied, but that s. 1, cl. 13, of the Limitation Act was applicable.

On a second review in *HEERANUND SAHOO v. OZEERUN* . . . 9 W. R., 102
cl. 12 of s. 1 was held to apply to the case.

2. ————— *Malikana—Interest in land.*—Malikana is an interest in land coming under Act XIV of 1859, s. 1, cl. 12, and the right to recover it ceases when it is left as an unclaimed deposit in the Collector's hands for twelve years. *GOBIND CHUNDER ROY CHOWDHRY v. RAY CHUNDER CHOWDHRY*
[19 W. R., 94

KRISHTO CHUNDER SANDEL CHOWDHRY v. SHAMA SOONDURIE DEBIA CHOWDHRAIN 22 W. R., 520

3. ————— *Payment of malikana by one of joint holders.*—A payment by one of two persons holding land jointly of malikana on account of the joint land saves the operation of the limitation as against both of them. *NURSINGH NARAIN SINGH v. AMEERUN* . . . 22 W. R., 551

4. ————— *Malikana commuted from payment in cash to set off against rent.*—Where an arrangement has been effected by which malikana is to be paid, not in cash, but as a set-off against the rent payable, to be deducted therefrom, and it is not shown that the right to such malikana has been alienated, the fact of its not having been paid in cash for twelve years is not a bar to the claim of the maliks for the malikana. *ALEH AHMUD v. NEHAL SINGH* . . . 21 W. R., 88

5. ————— *Suit for malikana.*—Malikana is an annual recurring charge on immoveable property, and may be sued for within twelve years from the time when the money sued for becomes due. *HURMUZI BEGUM v. HIRDAYNARAIN*

[I. L. R., 5 Cal., 921 : 6 C. L. R., 133

LIMITATION ACT, 1877—continued.

6. ————— *Suit for recovery of hak—Immoveable property.*—In suits for recovery of haks, which are of the nature of claims of money charged upon or payable out of land, the period of limitation is twelve years. *BHARATSANGJI MANSANGJI v. NAVANATHHARAYA MANSUKHRAM* . . . 1 Bom., 186

See *FUTTEHSANGJI JASWANTSANGJI v. DESAI KULLIANRAJI HAKOOMUTRAJI*

[13 B. L. R., 254 : 10 Bom., 281
L. R., 1 I. A., 34 : 21 W. R., 178

Overruling decision in *FATESSANGJI v. DESAI KALYANRAJA* . . . 4 Bom., A. C., 189

But *see* *RAJU MANOR v. DESAI KULLIANRAI HUKMATRAI* . . . 6 Bom., A. C., 56

which was held to be a case of a hak not charged on land.

7. ————— *Suit by hakdar against original grantee—Suit by sharer of hak against another—Desaigiri allowance.*—Art. 132, sch. II of the Limitation Act (IX of 1871), applies to suits which are brought by a hakdar against the person originally liable for payment of the hak, and not to suits by one sharer in a watan against another sharer or alleged sharer who has improperly received the plaintiff's share of the hak. A suit of the latter description is a suit for money received by the defendant for the plaintiff's use, and the period of limitation is three years as prescribed by art. 60 of the Act. *HARMUKHGAURI v. HARISUKHPRASAD*
[I. L. R., 7 Bom., 191

8. ————— *Bond charging immoveable property—Enforcing bond by demanding payment as if secured by collateral mortgage of land.*—Where a suit was brought upon a bond to secure the payment of principal and interest, and the relief sought was that payment of principal and interest might be enforced, both as a simple contract liability and a debt secured by a collateral mortgage of immoveable property,—*Held* that the suit was one for the recovery of an interest in land under s. 1, cl. 12, Act XIV of 1859, and was not barred for twelve years. *KRISTNA ROW v. HACHANA SUGARA* 2 Mad., 307

CHETTI GAUNDAN v. SUNDARAM PILLAI
[2 Mad., 51

KAUNDAN v. MUTTAMMAL . . . 3 Mad., 92

OOMRAO BEGUM v. KHOOSERAM
[1 N. W., 181 : Ed. 1873, 260

JONNA VENKATA SAWMI alias VENKATASETTY v. BASIREDDY KONDAREDDY . . . 5 Mad., 364

and *SURWAR HOSSEIN KHAN v. GHOLAM MAHOMED* . . . B. L. R., Sup. Vol., 879

S. C. SURWAN HOSSEIN v. GHOLAM MAHOMED
[9 W. R., 170

Overruling *PARUSH NATH MISSEER v. BUNDAN ALI*
[6 W. R., 132

The cases of *GORA CHAND DUTT v. LOKENATH DUTT* . . . 8 W. R., 334

KADARSA RAUTAN v. RAVIAH BIBI 2 Mad., 108

LIMITATION ACT, 1877—continued

from a zamindari under an agreement dated 1861, died in that year. In 1867 A, his senior widow claimed the allowance, the zamindar contended that the allowance was personal to S, and did not descend to his heirs. K obtained a decree. In 1861 R, the junior widow of S, sued K to establish the right of her son W, to succeed to the estate of S as his son and sole heir, and obtained a decree from the Privy Council in 1871. In 1872 M demanded and was refused the allowance from the zamindar. In 1875 M came of age, and in 1879 brought a suit against the zamindar to establish his right to the allowance. *Held* that the claim by M was not barred by limitation. **RAMNAD ZAMINDAR v. DORASAMI**

[I L R, 7 Mad, 341]

ZAMINDAR OF RAMNAD v. DORASAMI

[I L R, 7 Mad, 341]

6 ———— *Execution of decree for maintenance—Decree for payment of an annuity without specifying date of payment—Default in paying such annuity—Enforcement of payment by*

decree and recovered since years arrears. In 1865, payments having again fallen into arrears she again applied for execution, but her application was rejected as barred by limitation, having been made more than three years after the last preceding application. *Held* that the application was not time barred. The decree created a periodically recurring right though no precise date was specified in the decree for payment of the annuity, the judgment debtors were liable to make the payment on the day year from its date, and henceforward on the corresponding date

I L R, 7 Mad 80 and *Yusuf Khan v. Sardar Khan*, I L R, 7 Mad 83 distinguished. **LAKSHMI DAT BAPUJI OKA v. MADHAYRAY BAPUJI OKA**

[I L R, 12 Bom, 65]

7 ———— *Declaratory decree for share of rents and for mesne profits—Periodical*

LIMITATION ACT, 1877—continued

8 ———— and art 132—*Claim for arrears of revenue by grantee from Government*—The right to the revenue on certain land having been granted to the trustees of a mosque the said grant was confirmed by Government in 1866. In 1883 a suit was brought to recover arrears of revenue from the owners of the land. It was found that no payment of revenue had ever been made by the defendants to the plaintiff and the suit was dismissed.

years' arrears of revenue. **ALUBI v. KUNHI BI**
[I L R, 10 Mad, 115]

9 ———— and art 62—*Suit to establish title to a share in an annual allowance and also to recover arrears*—A suit by a co sharer

plaint from the Musammar's treasury, and also to recover six years arrears. Both the lower Courts found that the plaintiffs had not received their share of the allowance at any time within twelve years before suit and therefore rejected the plaintiffs' claim. *Held* that the suit was barred.

enjoyment of their share for twelve years before

10 ———— and art 132—*Kattubadi—Recurring right—Madras Rent Recovery Act (Mad Act VIII of 1860) s 7*—In a suit by a zamindar against the grantee of an inam to recover arrears of kattubadi it appeared that no payment had been made in respect of kattubadi for a period of twelve years before suit. The suit was dismissed in the Court of first appeal on the findings among

art 132 (1871, art 132)

1 ———— *Malikana—Recurring cause of action*—*Held* (by GLOVER, J) that malikana

the date of the decree. **VIVAYAK AMRIT v. ABRAJ HADPATRAY**

[I L R, 12 Bom, 416]

LIMITATION ACT, 1877—continued.

Prasad, I. L. R., 7 All., 502; Gauri Shankar v. Surju, I. L. R., 3 All., 276; and Tadman v. P. Pincuit, L. R., 20 Ch. D., 758, referred to.
RAMSIDHU PANDE v. BALGOHINI

[I. L. R., 9 All., 158]

14. ———— *Construction of will—Charge on immovable property.*—A will devising immovables stated that the father of the devisee had lent a sum of money to the testator, and directed the devisee to repay the debt with interest. This was construed to be a charge on immovables, and it was held that a suit, brought by the auction-purchaser of the creditor's claim, to recover the above-mentioned debt was within art. 132 of the second schedule of Act XV of 1877, and, having been brought within twelve years from the date when the debt was so charged, was not barred by time. **GRISH CHANDER MAITI v. ANANDOMOTI DEBI**. I. L. R., 15 Cal., 68

[L. R., 14 L. A., 137]

15. ———— *Purchase-money, Suit by vendor to recover.*—The defendants purchased land from the plaintiff, and gave bonds for the purchase-money. These bonds were not registered, and were therefore not admissible in evidence. *Held* that the plaintiff as vendor was under no necessity to rely on the bonds in order to establish a charge in the property sold in respect of the unpaid purchase-money. Unpaid purchase-money is a charge on the property in the hands of the vendee, and the claim to enforce it falls under art. 132, sch. II of the Limitation Act. **VIRCHAND LALCHAND v. KUMARI**

[I. L. R., 18 Bom., 48]

16. ———— *Suit for payment of annuity.*—A plaintiff, whose right to receive a yearly payment out of the income of certain immovable property had been settled by arbitration in the course of a suit in 1864, sued in 1890 to recover from the then holder of the property arrears of such allowance for two years preceding the suit. The plaintiff alleged, but failed to prove, that he and his predecessor in title had received payment of the allowance for the intervening years or any of them. *Held* that the suit was not barred by limitation. **Chagan Lal v. Bapubhai, I. L. R., 5 Bom., 68, followed.**
GAJPAT RAI v. CHIMMAN RAI

[I. L. R., 16 All., 189]

17. ———— *Suit for kattubadi—Whether kattubadi is rent merely or constitutes a charge.*—The plaintiff sued for possession of three villages granted by his predecessor to the ancestors of the defendants on the ground that the villages had been granted on service tenure, and that he was entitled to resume them. He prayed in the alternative for a decree for six years' arrears of kattubadi. *Held* that the plaintiff was entitled to a decree for only three years' arrears of kattubadi. **VIZIANAGARAM MAHARAJAH v. SITARAMARAZU**

[I. L. R., 19 Mad., 100]

Contra VENKATARAMA DOSS v. MAHARAJAH OF VIZIANAGRAM. I. L. R., 19 Mad., 103 note

18. ———— *Suit for money due on mortgage-bond—Money payable by instalments—*

LIMITATION ACT, 1877—continued.

Default in payment of instalment—Right to sue for entire amount due on default of payment of any instalment.—Where, by a mortgage-bond (hypothecating immovable property) executed by the defendants, a sum of money was made payable by four instalments, the plaintiff to be at liberty in case of any default to sue either for the amount of that instalment or for the whole amount due on the bond, —*Held* that limitation ran from the date of the first default. **SITAB CHAND NAHAR v. HYDER MALLA**

[I. L. R., 24 Cal., 281]

1 C. W. N., 220

19. ———— *Suit for money lent on mortgage—Cause of action—Bond, Construction of.*—In a mortgage-bond, dated the 14th June 1876, it was stipulated that the money advanced should be repaid "in the month of Jeyth 1289 Fushl, being a period of six years." The last day of Jeyth 1289 answered to the 1st June 1882, and the period of six years from the date of the bond ended on the 14th June 1882. In a suit brought upon the bond on the 12th June 1894,—*Held* (AMJER ALI, J., *dubitante*) that the money sued for became due on the 14th June 1882, and the suit was in time. **Rungo Bujaji v. Babaji, I. L. R., 6 Bom., 83; Almas Bancee v. Mahomed Ruja, I. L. R., 6 Cal., 239; and Gnana-sammanda Pandaram v. Palaniyandi Pillai, I. L. R., 17 Mad., 61, referred to by BEVERLEY, J.**
LATIFUNNESSA v. DHAN KUNWAR

[I. L. R., 24 Cal., 382]

20. ———— *Hypothecation-bond for payment on certain date—On default in payment of interest whole amount payable on demand—Meaning of "payable on demand."*—Where a hypothecation-bond provided for the repayment of the principal sum on a certain date with interest in the meantime payable monthly, and further provided that, on default in payment of interest, the principal and interest should become payable on demand,—*Held* that the period of limitation prescribed by art. 132 of the Limitation Act was applicable, and that period began to run from the date of the default. **Hannantram Sadhuram Pity v. Bowles, I. L. R., 8 Bom., 561, and Hall v. Stowell, I. L. R., 2 All., 322, distinguished.** **PERUMAL AYYAN v. ALAGRISAMI BHAGAVATHAR**. I. L. R., 20 Mad., 245

21. ———— *Interest on mortgage-bond.*—Where a mortgage-bond stipulated that interest at a certain rate should be paid annually and there were no words limiting this liability to the time fixed for the payment of the principal, and where it appeared from the evidence that interest had been paid for several years after the due date,—*Held* that the interest was a charge on the property, and that the claim for interest fell under art. 132 of the Limitation Act (XV of 1877). **VITHOBA TIMAP SHANBHOG v. VIGNESHWAR GANAP HEDGE**

[I. L. R., 22 Bom., 107]

22. ———— and art. 120—*Suit on mortgage-bond to recover amount by sale of property—Personal liability of mortgagor—Cause of action.*—By a mortgage-bond, dated the 28th Magh 1281 B.S. (9th February 1875), it was

LIMITATION ACT, 1877—continued

SEETUL SINGH v SOORUJ BUKSH SINGH
[6 W R, 318]and LISTER v KO MINOVE
7 W R, 354
may also be considered as overruled.

9 ————— Bond—Instrument creating interest in immovable property—B having borrowed money from A executed in his favour a bond (which was afterwards duly registered) in which he engaged to repay the amount with interest on a day named and hypothecated certain lands by way of security with a condition that in the event of the said lands being sold in execution of decree before the day fixed for repayment A should be at liberty at once to sue for the recovery of the debt. Before the term for repayment expired the mortgaged lands were sold in execution of a decree obtained by another creditor on a second bond made by B.

LIMITATION ACT, 1877—continued

should be paid by him (B) and that A should pay the rent of the land out of the profits of the land without any objection. A instituted a suit on the 3rd August 1885 to recover the Rs 99. Held that the document did not amount to a mortgage nor did it create a charge under s 109 of the Transfer of

It was barred by limit
rt 132
licable
lies

BENA UPADHYA 1 L R, 22 Cal 687

12 ————— Registered hypothecation bond—Personal remedy barred after 3 years—Act

sale of the property charged and not to enforce the personal remedy on a registered bond by which immovable property is pledged as security for the debt. BENSAYYA v ANAYAMA

[1 L R, 10 Mad, 100]

13 ————— Suit for money charged on immovable property—Instrument purporting

cover the principal and interest due upon and the enforcement of lien against and sale of im

were intended to oblige or that this being so the maxim certum est quod certum reddi potest applied that the bond created a charge upon the immovable property of the debtor in respect of the principal and interest in

was brought within

JUNESWAR DASS v MAHABEEN SINGH

[1 L R, 1 Cal, 163 25 W R, 84
L R, 31 A, 1]

10 ————— Suit for money charged on a property and charged

11 ————— Charge on immovable property—Mortgage—Suit for money lent—A lent B Rs 99 and B executed a document on the 21st July 1881 whereby he agreed to repay the amount with interest in the month of Baisakh 1289 F S (April

LIMITATION ACT, 1877—continued.

Prasad, I. L. R., 7 All., 502; Gauri Shankar v. Surju, I. L. R., 3 All., 276; and Tadman v. D'Epineuil, L. R., 20 Ch. D., 758, referred to.

RAMSIDIH PANDE v. BALGOBIND
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[I. L. R., 14 L. A., 137]

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[I. L. R., 19 Mad., 100]

Contra VENKATARAMA DOSS v. MAHARAJAH OF VIZIANAGRAM. I. L. R., 19 Mad., 103 note

18. ———— *Suit for money due on mortgage-bond—Money payable by instalments—*

LIMITATION ACT, 1877—continued.

Default in payment of instalment—Right to sue for entire amount due on default of payment of any instalment.—Where, by a mortgage-bond (hypothecating immoveable property) executed by the defendants, a sum of money was made payable by four instalments, the plaintiff to be at liberty in case of any default to sue either for the amount of that instalment or for the whole amount due on the bond, —*Held* that limitation ran from the date of the first default. *SITAR CHAND NAHAR v. HYDER MALLA*
[I. L. R., 24 Calc., 281
1 C. W. N., 229]

19. ———— *Suit for money lent on mortgage—Cause of action—Bond, Construction of.*—In a mortgage-bond, dated the 14th June 1876, it was stipulated that the money advanced should be repaid "in the month of Jeyth 1289 Fusi, being a period of six years." The last day of Jeyth 1289 answered to the 1st June 1882, and the period of six years from the date of the bond ended on the 14th June 1882. In a suit brought upon the bond on the 12th June 1894,—*Held* (AMER ALI, J., dubitante) that the money sued for became due on the 14th June 1882, and the suit was in time. *Rungo Bujaji v. Babaji, I. L. R., 6 Bom., 83; Almas Bane v. Mahomed Ruja, I. L. R., 6 Calc., 239; and Gnana-sammanda Pandaram v. Palaniyandi Pillai, I. L. R., 17 Mad., 61, referred to by BEVERLEY, J.*
LATIFUNNESSA v. DHAN KUNWAR
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20. ———— *Hypothecation-bond for payment on certain date—On default in payment of interest whole amount payable on demand—Meaning of "payable on demand."*—Where a hypothecation-bond provided for the repayment of the principal sum on a certain date with interest in the meantime payable monthly, and further provided that, on default in payment of interest, the principal and interest should become payable on demand,—*Held* that the period of limitation prescribed by art. 132 of the Limitation Act was applicable, and that period began to run from the date of the default. *Hanmantram Sadharam Pity v. Bowles, I. L. R., 8 Bom., 561, and Hall v. Stowell, I. L. R., 2 All., 322, distinguished.* *PERUMAL AYYAN v. ALAGRISAMI BHAGAVATHAR*. I. L. R., 20 Mad., 245

21. ———— *Interest on mortgage-bond.*—Where a mortgage-bond stipulated that interest at a certain rate should be paid annually and there were no words limiting this liability to the time fixed for the payment of the principal, and where it appeared from the evidence that interest had been paid for several years after the due date,—*Held* that the interest was a charge on the property, and that the claim for interest fell under art. 132 of the Limitation Act (XV of 1877). *VITHOBA TIMAP SHANBHOG v. VIGNESHWAR GANAP HEDGE*
[I. L. R., 22 Bom., 107]

22. ———— and art. 120—*Suit on mortgage-bond to recover amount by sale of property—Personal liability of mortgagor—Cause of action.*—By a mortgage-bond, dated the 28th Magh 1281 B.S. (9th February 1875), it was

LIMITATION ACT, 1877—continued

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secured by the Lordship of the Manor of Magd 1293 (January February 1870) In a suit instituted on the 9th October 188 upon the sale of the same by the sale of

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[9 B L R, 175 note 10 W R, 379]

GOKALBHAI MULCHAND & JHAYER CHATURBHUIJ
[S. Bom., A. C. 61]

34 *Mortgage — Interest — Charge on land.*—In suits to recover the principal and interest of a loan secured by a mortgage of immoveable property interest for twelve years is recoverable by virtue of art 132 of sch II of the Limitation Act 1877 **DAYANI ANNAI v. RAJNA CHETTI** **I L R. 6 Mad. 417**

on _____ Money charged on 1st

time barred as he had been a

LIMITATION ACT, 1877—continued

b. note the suit under art 132 of Act VV of 1877
suit for
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to a suit in B. No.
BEZONJI & ABDOL RAHMAN

PLR 5 Bom 483

38 Mortgage—Sut by a mortgagee to recover debt from a mortgagor personally.—Money decree—Art. 123 of the Limitation Act XV of 1877 sch II is applicable to a suit by a mortgagee to obtain a mere money decree to which suit therefore the limitation of twelve years from the time the money sued for becomes due applies. *Pestonj, Bezorg, v Abrool* *Rahman I L R 6 Bom 465 or ruled LALU BHAI v NARAN I L R 6 Bom. 719*

27 ————— and art 120 — Sale
for arrears of revenue — Lien of mortgagee on
balance of sale proceeds — Transfer of Property
Act (1F of 1882), s 73 — Mortgage suit — Charge
on proceeds of revenue sale — Revenue paying
estate — Act XI of 1859 s 53 — When a mortgaged
property being a revenue paying estate is sold free
from all incumbrances for arrears of revenue the
lien of the mortgagee on the proceeds of the sale
remains after
The time will
recover money
therefore shortened by reason of the sale of the
been sold for arrears of Government revenue in
such a case a suit brought by the mortgagee for
enforcement of the mortgage debt out of the surplus
sale proceeds will be governed by art 132 of the
Limitation Act. Even if the original cause of action
for enforcement of the mortgage debt is barred the mortgagee

surplus sale proceeds art 120 of the MHA Act would apply to such a sale. *Ram Doss v Kaika Persad I L R 7 All 509 L R 12 I A 12* and *Muller v Ranga Nath Shoul ck I I R 12 Cal 389 distinguished in MALA KANT SEN v ABUL BAKAT alias HABIBULLA*

II L. R., 27 Calc., 180

28 _____ Interest—Dom Reg V
s. 11 and 12—Act XXVIII of 1825—

to the date of the mortgage two successive money-
bonds in each of which it was stipulated that if
it should
it not be
claimed until the bond was
The
assignee of the equity of redemption sued for
possession of the estate on payment merely of the

LIMITATION ACT, 1877—continued.

mortgage-money. *Held* that s. 12 of Regulation V of 1827 is not in force. That section was repealed by Act XXVIII of 1855, s. 1, and although the latter section was repealed by Act XIV of 1870, the former was not restored, there being no express provision in Act XIV of 1870 to revive it, as required by the General Clauses Act (I of 1868, s. 3). The question of the period for which interest was to be allowed was therefore to be determined by Act XV of 1877, the Act in force at the date of the institution of this suit, art. 132 of which applied; but as the rule of *dandapat* is not affected by Limitation Acts, the defendants could not be allowed as interest more than the amount of the principal on which it was to be paid. **HARI MAHADASI v. BALAMBHAT RAGHUNATH**. I. L. R., 9 Bom., 233

29. ———— *Suit by mortgage to recover mortgage-money—Suit for money charged on immoveable property—Relief against the person of mortgagor.*—In a suit by a mortgagee to enforce the mortgage, No. 132, sch. II of the Limitation Act, 1877, is not applicable, so far as relief against the mortgagor personally is claimed. **Lallubhai v. Naran**, I. L. R., 6 Bom., 719, dissented from. **RAGHUBAR DATAT v. LACHMIN SHANKAR**

[I. L. R., 5 All., 461]

30. ———— *Periods respectively applicable to personal demands and to claims charged on immoveable property.*—That there is a personal liability upon an instrument charging a debt upon immoveable property does not carry with it the effect that the period of limitation fixed for personal demands by Act IX of 1871 is extended, by reason of this demand being thereby brought within the meaning of art. 132 of sch. II of that Act, which applies to claims "for money charged upon immoveable property." A mortgagee of lands sought, after the lapse of more than six years from the date when the mortgage-money was payable, to enforce two distinct remedies, the one against the property mortgaged and the other against the mortgagor personally, on the contract to repay the mortgage-money. *Held* that art. 132 above mentioned applied only to suits to raise money charged on immoveable property out of that property; and the twelve years' bar did not apply to the personal remedy, as to which the shorter period prescribed in art. 65 of the same schedule applied. **RAM DIN v. KALKA PRASAD**

[I. L. R., 7 All., 502; L. R., 12 I. A., 12]

31. ———— *Unpaid purchase-money—Suit to recover the money from the vendee personally and from the property sold—Personal remedy—Limitation Act, sch. II, art. 111.*—Unpaid purchase-money is a charge on the property in the possession of the vendee, and a suit to enforce it against the property so charged falls under art. 132 of the Limitation Act (XV of 1877). But the article does not extend the time allowed otherwise under the Act to claims to recover the money from the defaulter personally or his other property. The limitation for the personal remedy is three years under art. 111. **Virchand v. Kumaji**, I. L. R., 8 Bom., 48, and **Ram Din v. Kalka Prasad**, I. L.

LIMITATION ACT, 1877—continued.

R., 7 All., 502; L. R., 12 I. A., 12, followed. Where certain land was sold and possession given to the vendee in 1890, and a suit was brought in 1895 to recover the unpaid purchase-money from the vendee personally as well as from the property sold, —*Held* that the personal claim was time-barred. **CHUNILAL v. BAI JETHI** I. L. R., 22 Bom., 846

See **NATESAN CHETTI v. SOUNDARAJA AYYANGAR** [I. L. R., 21 Mad., 141]

32. ———— *Transfer of Property Act (IV of 1882), s. 55, sub-s. 4 (b)—Vendor's lien—Suit to enforce charge against the property.*—*Held* that a suit by a vendor of immoveable property to enforce against the property his lien for the unpaid purchase-money, s. 55, sub-s. 4 (b), of the Transfer of Property Act, 1882, falls within art. 132 of the second schedule to the Limitation Act, 1877. **Virchand Lalchand v. Kumaji**, I. L. R., 18 Bom., 48, and **Chunilal v. Bai Jethi**, I. L. R., 22 Bom., 846, followed. **Natesan Chetty v. Soundararaja Ayyangar**, I. L. R., 21 Mad., 141, dissented from. **Ramdin v. Kalkapershad**, L. R., 12 I. A., 12; **Sutton v. Sutton**, L. R., 22 Ch. D., 511; and **Toft v. Stevenson**, 5 De G. M. & G., 735, referred to. **HAR LAL v. MUHAMMID** [I. L. R., 21 All., 454]

33. ———— and art. 147—*Hypothecation.*—In 1884 *N* sued *A* to recover the principal and interest due on a registered bond executed in 1870. It was stipulated that the amount should be repaid with interest in 1871, and certain immoveable property was hypothecated as security for repayment of the debt. *Held* that the suit did not fall under art. 147 of sch. II of the Limitation Act, which allows sixty years to a mortgagee to sue for foreclosure or sale from the date the money becomes due, but under art. 132 of the same schedule, which allows twelve years to enforce a payment of money charged on immoveable property. **ALIBA v. NANU** [I. L. R., 9 Mad., 218]

34. ———— *Suit for sale of immoveable property by a creditor who has a right to realize a charge not amounting to a mortgage.*—The special provision of art. 147 of the Limitation Act (XV of 1877) applies to all suits properly brought by a mortgagee for foreclosure or sale, while the general provision of art. 132 applies to suits for sale, by a creditor having a right to realize a charge not amounting to a mortgage. **KHEMJI BHAGYAN-DAS GUJAR v. RAMA** I. L. R., 10 Bom., 519

35. ———— *Suit for dower as a charge on immoveable property in hands of heir.*—A suit by a Mahomedan widow against the heir, who has ousted her, for her dower, as being a lien on landed property, was held to be governed by cl. 12, s. 1, Act XIV of 1859. **JANEZ KHANUM v. AMSTOOL FATIMA KHATOON** 8 W. R., 51

36. ———— *Suit for money lent on deposit of title-deeds.*—Where a creditor sues to recover money advanced by him on the deposit of title-deeds of property, his claim is governed by the limitation applying to debts; but where he seeks to have

LIMITATION ACT, 1877—continued

provided that if the mortgagors should fail to pay the money secured thereby according to the terms thereof, the mortgagees should immediately institute a suit and realize the amount due by sale of the

was further agreed that the principal and interest secured by the bond should be repaid in the month of Magh 1282 (January February 1876) In a suit instituted on the 9th October 1887 upon the mortgage to recover the amount due by the sale of

gagors in the event of the first remedy against the mortgaged property proving insufficient to pay the debt in full and consequently that the cause of action against the persons of the mortgagors accrued upon the date on which the mortgage money became due, and as the suit was instituted more than six

refers to suits to enforce payment of money charged upon immoveable property by the sale of such property MILLER v RUNGA NATH MULLICK

[I L R., 12 Calc., 389]

See CHETTAI MAL v THAKURI

[I L R., 20 All., 512]

23. ——— Suit to enforce charge under mortgage deed — Held that a suit to enforce the charge under a mortgage deed is a suit of the nature mentioned in cl 12 s 1 and can be brought at any time within twelve years KOONI BEHARI LALL v LAL NARAIN

2 Agra, 244

MANU LALL v PEGUE

[9 B L R., 175 note 10 W. R., 379]

GOKALDHAT MULCHAND v JHAVER CHATURBHUI

[8 Bom., A C., 61]

24. ——— Mortgage — Interest — Charge on land — In suits to recover the principal and interest of a loan secured by a mortgage of immoveable property, interest for twelve years is recoverable by virtue of art 132 of sch II of the Limitation Act 1877 DATANI AMMAL v RATNA CHETTI

I L R., 6 Mad., 417

25. ——— Money charged on im-

mortgage, but prayed only for a money decree The

time barred, as he had twelve years within which to

LIMITATION ACT, 1877—continued

bring the suit under art 132 of Act XV of 1877 Held that plaintiff was too late in bringing a suit for a money decree on the promise to pay in the mort

BEZONJI v ABDUL RAHIMAN

[I L R., 6 Bom., 483]

28. ——— Mortgage — Suit by a mortgagee to recover debt from a mortgagor personally — Money decree — Art 132 of the Limitation Act XV of 1877, sch II is applicable to a suit by a mortgagee to obtain a mere money-decree, to which suit therefore, the limitation of twelve years from the time the money sued for becomes due applies PESTONJI, BEZONJI v ABDUL RAHIMAN I L R., 5 Bom., 483 overruled LALLU BHAI v NARAIN

I L R., 6 Bom., 710

27. ——— and art 120 — Sale for arrears of revenue — Lien of mortgagee on balance of sale proceeds — Transfer of Property Act (IV of 1882), s 73 — Mortgage suit — Charge on proceeds of revenue sale — Revenue paying estate — Act XI of 1859, s 53 — When a mortgaged property, being a revenue paying estate, is sold free from all incumbrances for arrears of revenue, the

recover money charged on a mortgaged estate is not therefore shortened by reason of the estate having been sold for arrears of Government revenue, in such a case a suit brought by the mortgagee for satisfaction of the mortgage debt out of the surplus sale proceeds will be governed by art 132 of the

and MILLER v RUNGA NATH MULLICK I L R., 12 Calc. 389, distinguished HAMALA RANT SEN v ABUL BAKKAT alias HABIBULLA

[I L R., 27 Calc., 180]

28. ——— Interest — Bom Reg V of 1827, ss 11 and 12 — Act XXVIII of 1855 — Act XIV of 1870 — General Causes Consolidation Act (I of 1869) — Damdupat — Rule — The mortgagor of an estate gave to the mortgagee, subsequently to the date of the mortgage, two successive money-bonds

claimed until the bond had been satisfied. The assignee of the equity of redemption sued for possession of the estate on payment merely of the

LIMITATION ACT, 1877—continued.

44. ————— Mortgage—Unfructuary mortgage—Further mortgage of the same property—Destruction of mortgaged property by diluvion—Transfer of Property Act (II of 1882), s. 68,

47. ———— Suit on a hypothecation-bond, dated 1876 (before Transfer of Property Act),

LIMITATION ACT, 1877—continued

37 ———— *Suit for money charged on rents and profits*—Suit for money charged on immoveable property—K borrowed from G a sum of Rs. 1 and at the same time executed a bond

immoveable property it being charged upon rents and profits *in alieno solo* which in English Law would be classed as incorporeal hereditaments but which by the law of India are included in immutation
 money
 XV of
 d Pes
 5 Bom

38 ———— *Suit for share of Gov*

DEO NUNDUN AGHA v DESPUTTY SINGH
 [8 C L R, 210 note]

39 ———— *Suit to establish title and for arrears*—The plaintiff sued the defendants to recover a share of the income of a certain watan which was admitted to be connected with an hereditary office but was not strictly speaking charged upon immoveable property. In 1861 the plaintiff

admitted that he had received no payment for the year 1861 and that his claim for that year was

much of the arrears as was time barred under that Act

LIMITATION ACT, 1877—continued

by the provisions of cl 12 of s 1. It was also contended on behalf of the defendants that even if the period of limitation were held to be twelve years the plaintiff's claim was nevertheless barred *in toto* inasmuch as he admitted that he had received no payment on account of his share for thirteen years preceding the institution of the suit. In

rest on such title are not distinct and independent of each other so that if the former be barred even the arrears cannot rule w

BAFUSHAI

I L R 5 Bom, 68

40 ———— *Debt not charged on immoveable property*—Hindu widow—Retainer

become payable. Held that unless the debt had been effectively charged on immoveable property

41 ———— *Suit to enforce mortgage by father against sons*—A suit to enforce against

LIMITATION ACT, 1877—continued.

7. ——— *Suit against purchasers by representative of mortgagor.*—In a suit by the representative of a mortgagor against *bona fide* purchasers for valuable consideration from the mortgagee, *Held* that the period of limitation was twelve years from the date of the purchase, under s. 5, Act XIV of 1859. *SITHA UMMAL v. RUNGASAMI IVENGAR* . . . 5 Mad., 385

8. ——— *Mortgage by member of joint Hindu family—Bona fide purchaser.*—To cut off a purchaser to claim the benefit of Act XIV of 1859, s. 5, he must prove,—1st, that he is a purchaser of what is represented to him, and what he fully believes to be not a mortgage, but an absolute title; 2nd, that he purchased *bona fide*,—that is to say, without a knowledge of the title having been originally a mortgage, and of a doubt existing as to the mortgage having ceased; and 3rd, that he is a purchaser for valuable consideration. Where an estate having been originally mortgaged by *K*, a member of a joint Hindu family, he subsequently, without the knowledge of the other members, released the equity of redemption to *R*, who afterwards sold to *H*, the owner of a factory, who afterwards sold to *G & Co.* the factory with the lands appertaining thereto, amongst which was the property so released, and proceedings had for many years been taken by the other members to assert their rights.—*Held*, reversing the decision of the High Court, that *G & Co.* were not purchasers entitled to the protection of Act XIV of 1859, s. 5. *Held* also that s. 10 does not apply in such a case, although *K* acted fraudulently. *RADHANATH DAS v. ELLIOTT* . . . 6 B. L. R., 530

S. C. RADHANATH DAS v. GIBBORNE & Co.

[14 Moore's I. A., 1: 15 W. R., P. C., 24

Reversing the decision of the High Court in *GIBBORNE & Co. v. RADHANATH DAS* . 5 W. R., 253

9. ——— *Mortgage—Purchaser from mortgagee—Necessity of possession in order to validate transaction as against original mortgagor.*—A person purchasing or taking a mortgage from a mortgagee believing that he is getting a good title must have possession of the property for the statutory period in order to validate the transaction as against the original mortgagor under art. 134 of the Limitation Act (XV of 1877). *RAMCHANDRA VITHAL RAJADHIKSHA v. MOHIDIN*

[I. L. R., 23 Bom., 614

10. ——— *Sale of property by representatives of mortgagee.*—The sale of mortgaged property by the heirs of a mortgagee after it has been held and enjoyed by them upwards of sixty years does not give a fresh cause of action to the representatives of the mortgagor. *RAM DHUN BRUGGUT v. GUNESHEE MAHTOON* 16 W. R., 96

11. ——— *Bona fide purchaser.*—A defendant who seeks to protect himself by the provisions of s. 5, Act XIV of 1859, against the claim of a mortgagor suing within sixty years to recover mortgaged lands must show clearly that he, or the person from whom he derives his title, was a *bona fide*

LIMITATION ACT, 1877—continued.

purchaser. *JUGGURNATH SAHOO v. SHAH MAHOMED HOSSEIN* . . . 14 B. L. R., 386
[23 W. R., 99: L. R., 2 I. A., 49

12. ——— *Mortgage—Sub-mortgage by mortgagee—Suit for redemption by original mortgagor against mortgagee and sub-mortgagees—Adverse possession by sub-mortgagees—"Purchaser for value"—"Valuable consideration"—S. 5 of the Limitation Act (XIV of 1859)—Art. 134, sch. II of the Limitation Act (IX of 1871).*—*Held* that the expression "purchaser for valuable consideration" in art. 131 of the Limitation Acts (IX of 1871 and XV of 1877) includes a mortgagee as well as a purchaser properly so called. *Semble*—The words "*bona fide*," which appeared in art. 134, sch. II of the Limitation Act (IX of 1871), were advisedly omitted from art. 134, sch. II of the Limitation Act (XV of 1877), to exclude the possible inference that absence of notice of the real owner's claim was necessary to enable a purchaser to avail himself of the article. *YESU RAMJI KALNATH v. BALKRISHNA LAKSHMAN*

[I. L. R., 15 Bom., 583

13. ——— *Mortgage—Sub-mortgage—Suit for redemption.*—In 1864 *A* mortgaged the property in dispute with possession to *B*. *B* and his widow after his death sub-mortgaged various portions of it to *S* (defendant No. 3) in 1864, 1866, and 1870. After the death of the mortgagor, *A*, his grandsons (plaintiffs Nos. 1, 2, and 3) sold their equity of redemption to plaintiffs Nos. 4 and 5, and in 1891 the five plaintiffs sued defendants Nos. 1 and 2, the heirs of *B* (original mortgagee), and the sub-mortgagee (defendant No. 3), for redemption and possession. The defendants contended that the suit was barred by the Limitation Act (XV of 1877), sch. II, art. 134. *Held* that art. 134 did not apply, as the language of the sub-mortgage-deed showed that the transaction was merely a mortgage of the mortgage interest of *B*, and not of the entire property in the land. *Baivakhan Daudkhan v. Bhiku Sarba*, I. L. R., 9 Bom., 475, and *Yesu Ramji v. Balkrishna*, I. L. R., 15 Bom., 553, referred to. *SAVALARAM v. GENTU* . . . I. L. R., 18 Bom., 387

14. ——— *Mortgage—Decree obtained by mortgagee for possession until payment of mortgage-debt—Possession taken by mortgagee under decree—Continuance after decree of relation of mortgagor and mortgagee—Sale by mortgagee—Vendor and purchaser—Subsequent suit for redemption by mortgagor against mortgagee and his vendee—Purchaser, bona fide.*—A decree on a mortgage having directed the mortgagor to give possession to the mortgagee until the payment of the mortgage debt and costs found due, the mortgagee entered into possession, and subsequently sold the property to a third party. More than twelve years after the sale, the mortgagor brought a redemption suit both as against the mortgagee and the purchaser. *Held* that the suit (as against the purchaser) was barred under art. 134, sch. II of the Limitation Act (XV of 1877), and that, notwithstanding the decree for possession, the relationship of mortgagor and mortgagee continued, whether under the original mort-

LIMITATION ACT, 1877—continued

to secure money payable on demand—In a suit to

14 B L R, 21 Mad, 100
48 ————— and art 147—*Mortgage*—*Suit for sale*—On 21st July 1879 the defend

49 ————— 'On demand'—*Accrual of cause of action*—In a suit brought in 1893 on a

————— art 134 (1871, art 134, 1859, s 5)

1 ————— *Bona fide purchasers*—S 5 Act XIV of 1859 was intended to benefit only bona fide purchasers from trustees KYROONISSA : SABBAGOVISSA KHATOON 5 W R, 238

2 ————— *Priority of bona fide purchase*—S 5 Act XIV of 1859 was held not to apply to a case of priority of bona fide purchase KALLY MOHUN PAL : BROJANATH CHAKRABARTY [7 W R, 138]

3 ————— *Bona fide purchaser—Property belonging to idol*—In 1793 an estate was purchased in the name of an idol and immediately afterwards was mortgaged Subsequently when the

page 51 2000 21 1000 115 2 second mortgage was purchased the defendant held the property under title derived from the mortgage of 1816 The heirs representatives in 1867 sued to recover possession

LIMITATION ACT, 1877—continued

and could not be barred by any length of time There was no evidence of a formal dedication of the property to the idol Held that the defendant claimed under the purchasers who had purchased bona fide and for valuable consideration with n s 5 and that therefore the period of limitation was twelve years from the date of purchase and the suit was barred BRAJA SUNDARI DEBI : LACHMI KUNWARI

[2 B L R, A C, 155 11 W R, 13]

S C on appeal to Privy Council
[15 B L R, P C, 178 note 20 W R, 95]

4 ————— *Endowed property—Suit to have land declared wakf*—In the case of wakf land the mere stoppage of religious service does not start limitation In a suit therefore to have land sold declared wakf and therefore unalienable the cause of action arises not from the cessation of services but from the date of the sale DOYAL CHAND MULLICK : KERAMUT ALI 16 W R, 118

A suit by a mutwali for endowed property alienated would probably come within this article

See LALL MAHOMED : LALL BHU KISHORE
[17 W R, 430]

5 ————— *Mortgage of endowed property—Suit for recovery of property*—Certain landed property alleged to have been sold to an idol and registered in the name of the vendee's infant son as shabait 1 ad after the death of that son been mortgaged twice by the vendee who succeeded to

the property by descendants of the vendee claiming as shabait of the idol—Held that the last mortgagee was a bona fide purchaser for valuable consideration, and was therefore entitled to the protection of s 5. GOBIND NATH ROY : LUCHMES KOOBARRE

[11 W R, 36]

6 ————— *Suit to remove trustee and recover possession of trust property from third party*—Civil Procedure Code (1852) s 539—Art 134 of the second schedule of the Indian Limitation Act (XV of 1877) applies to a suit for the dismissal of a trustee and for the recovery of trust property from the hands of a third party to whom the same has been improperly alienated Such a suit is within the scope of a 539 of the Civil Procedure Code Subbaya v Krishna I L R, 14 Mad, 186 followed. Lakshmandas Parashram v Ganapatray Krishna, I L R 8 Bom 365 distinguished. SAJEDUR RAJA CHOWDHURI : GOURA MOHUN DAS BAISHNAY I L R, 24 Cal, 418

LIMITATION ACT, 1877—continued.

High Court that the plaintiff's claim was barred by limitation. *Held* also that the dar-patnidar's occupation of the plot after his lien on it had expired was an adverse possession which the plaintiffs were bound to resist as soon as they became aware of it and that this obligation was not loosened by the fact that the mortgagees, on the expiry of their lien, were bound to find out the owners and deliver up the estate to them. **KANTI CHUNDER MOOKERJEE v. HANES DASS MOOKERJEE**

[25 W. R., 431]

9. *Purchaser from mortgagor—Adverse possession.* Where a party bona fide purchased from another as his own property land in fact mortgaged, and obtained possession and mutation of entries, his title was held to be adverse to the mortgagee. After a bona fide purchaser had been in open possession more than twelve years, and after the lapse of more than twelve years from the accrual to the mortgagee of the right of entry under the mortgage-deed (which was in the English form), the mortgagee sued the purchaser to obtain possession of the property. *Held* the suit was barred. *Quære*—Whether in cases in the mofussil, where the mortgagor continues in possession, paying rent to the mortgagee, the law of limitation begins to run from the date of the right of entry. **BRANJANATH KUNDU CHOWDHURY v. KUNJAT CHANDRA GHOSE**

[8 B. L. R., 104; 14 Moore's I. A., 144
16 W. R., P. C., 33]

S. C. in High Court, **KUNJAT CHUNDER GHOSE v. TARACHVEN KONDPOO CHOWDHURY** 6 W. R., 260

7. *Adverse possession—Purchaser at a sale in execution of decree.*—The possession of a purchaser at the sale in execution of decree, without notice of a mortgage of the property, is adverse to the mortgagee, and a suit to disturb his possession must be brought within twelve years of the commencement of such possession. **ANAND MAYI DASI v. DHARENDEBA CHANDRA MOOKERJEE**

[8 B. L. R., 122; 14 Moore's I. A., 101
16 W. R., P. C., 19]

Affirming decision of High Court in **DHARENDEBA CHUNDER MOOKERJEE v. ANAND MOYEE DOSSEE** [1 W. R., 103]

8. *Suit for possession—Conditional mortgage, Title of.*—It is not necessary for a conditional mortgage, if he be in possession at the expiry of the year of grace, to bring a suit to complete his title. The limitation period should be computed from the expiry of the year of grace, if the mortgagee be then in possession. **KHOON CHEND v. LEEILA DHUR**

3 Agra, 103

9. *Mortgage—Suit for possession—Foreclosure—Beng. Reg. XVII of 1806, s. 8—Cause of action.*—A, by a Bengali deed of conditional sale, dated the 10th of August 1853, mortgaged two estates, the deed providing that the mortgage-debt should be repaid on the 9th of July 1855, and that, on default of payment, the deed of conditional sale should become one of absolute sale, and that the mortgagee should thereupon acquire the absolute proprietary right, and might enter upon and

LIMITATION ACT, 1877—continued.

retain possession of the mortgaged property. A failed to pay at the time stipulated, and on the 18th of December 1856 her right, title, and interest in the estates were sold in execution, and purchased by the defendants without notice of the mortgage. On the 3rd of April 1866, the plaintiff bought the mortgagee's interest, and in August 1867 he instituted foreclosure proceedings under Regulation XVII of 1801 against the defendants, the auction-purchasers. In a suit instituted by the plaintiff on the 22nd January 1874 against the auction-purchasers to recover possession of the mortgaged property, *Held* that the cause of action arose on 9th July 1865, when default was made in payment of the mortgage-debt, and the suit, not having been instituted within twelve years from that date, was barred by s. 1, cl. 12, Act XIV of 1859. No new cause of action arose by reason of the foreclosure proceedings on the expiry of the year of grace in August 1868. **DJENONATH GANGOOBY v. NURSING PROSHAD DASS**

[14 B. L. R., 87; 22 W. R., 90]

10. *Mortgage—Suit for possession—Foreclosure—Cause of action.*—The defendant mortgaged certain immoveable property to the plaintiff by a *hyabul-wafa*, or deed of conditional sale, dated 20th January 1851. The deed stipulated that the mortgage-debt should be repaid on the expiration of three years from the date of the execution. The money was not repaid at the stipulated period, and the mortgagor remained in possession of the property, but there was some evidence to show that he had made payments of interest on the mortgage-debt to the plaintiff. In February 1870 the plaintiff took proceedings to foreclose the mortgage, and on 16th February 1872 he instituted a suit for possession of the property. The defence was that the suit was barred, the plaintiff having been out of possession for more than twelve years previous to the institution of the suit. *Held* that payment and acceptance of interest was evidence of the continuance of the relation between the parties created by the mortgage-deed; and until the mortgagor advanced any rights adverse to the mortgagee, the possession of the mortgagor was permissive, and no cause of action accrued to the mortgagee. **MANKEE KOOPER v. MUNXOO**

[14 B. L. R., 315; 22 W. R., 543]

11. *Suit for foreclosure of mortgage—Cause of action.*—The plaintiff, on the 2nd of August 1847, became mortgagee of a house under an instrument of mortgage, which provided that, in default of payment by the mortgagor of the mortgage loan within five years, the house should be considered as absolutely sold to the mortgagee. Default was made in payment and the mortgagee entered into possession, and continued in possession until 1858, when he was dispossessed by the mortgagor. On the 19th March 1866, the plaintiff filed a suit in the nature of a foreclosure suit against his mortgagor, to which the defendant pleaded the law of limitation. *Held* that the plaintiff's cause of action arose in 1858, when he was dispossessed by the defendant, and that he had, under Act XIV of 1859, s. 1, cl. 12, twelve years from that date within which

LIMITATION ACT, 1877—continued

in the belief that it is an absolute title **PANDU v VINAY I L R, 19 Bom, 140**

15 Vendor and purchaser—*Bond fides*—Notice of charitable trust—The words conveyed in trust in art 134 of sch II of the Limitation Act (IX of 1871) include devises in trust or are equivalent to the words vested in trust in s 10 of the same Act. The words

defendant in the present case though he purchased with actual notice must having regard to all the circumstances be held to have purchased in good faith and the suit was accordingly barred by limitation there being nothing in the Limitation Act

property **MANIKIAL ATMARAY v MANCHERESH DINSHA I L R, 1 Bom, 260**

16 Mortgage—Sale of mortgagee's rights and interests for the recovery of arrears of revenue Suit for redemption—Reg XI of 1822 s 29 Reg XIII of 1806—It was not intended that property which would pass on the sale by a mortgagee of his interest should come within the scope of art 134 sch II of the Limitation Act (XV of 1877). The article was intended to protect after the expiration of twelve years from the date of a purchase a person who happened to purchase from a mortgagee had reasonable grounds for believing and did believe that his vendor had the power to convey and was conveying to him an absolute interest and not merely the interest of a mortgagee **Radanath Doss v Giesborne & Co 14 Moore's I A 16 B I R 530 Parrey Lal v Saliga I L R 2 All, 394 and Kamal Singh v Batul Fatima I L R 2 All 460** referred to Contemporaneously with the execu

interest he would accept the same and cancel the sale and that he should be in possession during that period. This transaction admittedly amounted to a mortgage by conditional sale. The mortgagee remained in possession, and his name was entered as

LIMITATION ACT, 1877—continued

of other land and apparently no notice was given by any one at or prior to the sale that it was the mortgagee's interest only which was about to be or was being sold. The property was purchased for Rs 000 by B who took possession and in 1845 sold it for Rs 000 to T who took possession and in 1847 sold it for the same sum to C. On the occasion of each transfer the name of the transferee was entered in the Collector's register as that of proprietor. No application for foreclosure was made at any time. In

that the several transferees were innocent purchasers for valuable consideration without notice who had purchased in each case from the person who was with the consent express or implied of the persons for the time being interested the ostensible owner and had in each case prior to the purchase taken reasonable care to ascertain that the transferor had power to make the transfer and had acted in good faith. Held that art 134 of the Limitation Act did not apply to the case inasmuch as that article referred only to persons purchasing what was *de facto* a mortgage having reasonable grounds for the belief and believing that it was an absolute title, and that having regard to s 29 of Regulation XI of 1822 to the provision that the several transferees knew the law and made inquiries as to the interest they were purchasing and examined the register in which the deed constituting the transaction of 1835 (a mortgage) was registered and also having regard to the fact that Rs 000 only were paid as purchase money in each case and to the circumstance that it was doubtful whether a purchaser at a formal auction sale such as that in question could be said to have purchased without notice an absolute interest from the mortgagee it must be inferred that the transferees knew or might, or ought to have known unless they wilfully

that as by Regulation XI of 1806 mortgagors in such a case as the present were entitled to redeem within sixty years the plaintiffs were entitled to a decree for redemption **BHAGWAN SAHAI v BHARWAN DIN I L R, 9 All, 87**

17 Clause of conditional sale in mortgage—Suit by mortgagee for declaration of the title—Decree ordering delivery of property to mortgagee in default of payment of mortgage debt by mortgagors within one month—Default of payment by mortgagors—Effect of such default—Mortgaged property taken by mortgagee in execution of such decrees not as mortgagee but absolutely—Subsequent suit for redemption—In 1863 B and C mortgaged certain land to one G under a

LIMITATION ACT, 1877—continued.

of a decree against him and was purchased by the plaintiff. In 1877 *B* and his two brothers sold plot 1 to defendants Nos. 3—6, who at once paid off the mortgage of 1870, and took possession. On the 11th February 1877, the three brothers paid off the mortgage of 1874 of plot 2, and in the same month mortgaged that plot to the defendants with possession. On the 26th August 1890, the plaintiff sued for possession of *B*'s share by partition and redemption if necessary. *Held* that the suit was barred by art. 137 of the Limitation Act (XV of 1877). *B* became entitled to possession of his share of plot 1 in 1877, when the mortgage of 1870 was paid off by the defendants, and their possession had been since then adverse to the plaintiff. As to plot 2, *B* had become entitled to possession of his share therein on the 11th February 1877, when the mortgage of 1874 was redeemed. *Ramchandra v. Sadashiv*, I. L. R., 11 Bom., 422; *Bhoulid v. Shuk Ismail*, I. L. R., 11 Bom., 425; *Faki Abas v. Faki Nurudin*, I. L. R., 16 Bom., 191; and *Naro v. Ragho*, P. J. 1892, p. 412, referred to. *GANESH MAHADEO BHANDARKAR v. RAMCHANDRA SAMBHAJI MUASKAR*

[I. L. R., 20 Bom., 557]

—art. 138 (1871, art. 138).

See RIGHT OF SUIT—FRESH SUITS.

[I. L. R., 9 Calc., 602]

1. ———— *Suit for possession by purchaser at sale for arrears of revenue—Cause of action.*—Under the general Law of Limitation, the cause of action in a suit for possession by an auction-purchaser at a sale for arrears of revenue arises from the date of purchase. *HURREE MOHUN THAKOOR v. ANDREWS* W. R., 1834, 30

2. ———— *Sale in execution of decree by Sheriff—Period from which time runs.*—As land may pass by mere parol between a Hindu vendor and purchaser, the sale by auction by the Sheriff is enough, without his bill-of-sale, to complete the transaction as between vendor and purchaser, for the purpose of the Law of Limitation; therefore, where the suit was brought within the time fixed by the Law of Limitation, counting from the date of the Sheriff's bill-of-sale, but too late counting from the time of the actual auction-sale, —*Held* that the plaintiff was barred. *MOHESH CHUNDER CHATTERJEE v. ISSUR CHUNDER CHATTERJEE* . 1 Ind. Jur., N. S., 266

3. ———— *Purchase by mortgagee of mortgaged property.*—While a mortgagee was in possession of the mortgaged premises, the lands were sold for arrears of Government revenue, and purchased by the mortgagee. —*Held*, that his possession as mortgagee was superseded by his possession as purchaser, and that the Statute of Limitation commenced to run from the beginning of his possession as such purchaser. *BYKUNT DHUR SINGH v. LALLA BHUGO-BUT SAHOY* Marsh., 391; 2 Hay, 475

4. ———— *Suit by purchaser at sale for arrears of rent of patni tenure—Cause of action—Adverse possession.*—*A* let an under-tenure to *B*, which under-tenure was sold for arrears of rent under s. 105, Act X of 1859, and bought in by *A*. On proceeding to take possession, *A* found that *C*

LIMITATION ACT, 1877—continued.

had trespassed upon the under-tenure during *B*'s tenure, and had held possession for more than twelve years. *A* sued to recover possession of the under-tenure, and it was held by the senior Judge of the Division Bench (*BAYLEY, J.*) that *A*'s cause of action was the act of dispossession by *C*, and that the suit was barred, more than twelve years having elapsed; and that *A*'s right to sue was not affected by the fact that *B*'s tenure was still running. The junior Judge (*PHEAR, J.*) held that the suit was not barred; that the cause of action to *A* accrued when he obtained back the property at the auction-sale; and that during the period of encroachment the cause of action did not arise to *B* and pass from *B* to *A* during the time the patni lasted, the patni entirely disappearing in the superior title of zamindar vendee. *Held* by the Appellate Court, in confirmation of the view of *PHEAR, J.*, that the cause of action to *A*, who was a purchaser of an estate free from incumbrances against *C*, who was a trespasser, and had encroached on *B*, the defaulter, must be taken to accrue at the same time as his, *A*'s, right to turn out under-tenants of the defaulter, —*viz.*, from the time of the purchase of the tenure of the defaulter; and the fact that *A* was both talukhdar and purchaser did not prevent him from exercising the same rights as any other purchaser would be entitled to. *WOOMESH CHUNDER GOOPTO v. RAJNARAIN ROY*

[10 W. R., 15]

See *RAJNARAIN ROY v. WOOMESH CHUNDER GOOPTO* 8 W. R., 444

5. ———— *Survey proceedings—Suit for possession.*—Where the plaintiffs alleged that the disputed lands were fraudulently caused to be demarcated with defendant's zamindari at the time of the survey, and the Appellate Court had held that, as plaintiffs were not parties to the survey proceedings, the present suit was barred by limitation under the decision in *Woomesh Chunder Goopto v. Rajnarain Roy*, 10 W. R., 15, —*Held* that, in order to bring a suit within the purview of that decision, it was not enough for plaintiffs to say that this fraud was committed against them by the defendants, and that these defendants were still in possession of the lands as belonging to them and other neighbouring proprietors; but that it was necessary for them to show that they themselves were in possession of the disputed lands at the time when they granted the patni to the defendants, and that they made over that possession to those defendants at that time. *GOPAL KISHEN SINGH v. RAM NARAIN KOONDOL*

[17 W. R., 175]

6. ———— *Suit for possession—Cause of action.*—Where formal possession was given by the Court, but the defendants have remained in actual possession, the plaintiff must still date his cause of action from the date of sale. *JOWHER ALI v. RAMCHAND*

[2 B. L. R., Ap., 29; 24 W. R., 419 note]

Contra, *BINDUBASHINI DAS v. BENNY (RAINEY)*
[7 B. L. R., Ap., 20; 15 W. R., 30]

LIMITATION ACT, 1877—continued

to file his suit **LAKSHMIDAI v VITHAL RAM CHANDRA** 9 Bom, 53

12 ———— *Suit by mortgagee against mortgagor and purchasers from him—Regulation XVII of 1806—Transfer of Property Act (II of 1882)—A mortgage by conditional sale before the operation of the Transfer of Property Act 1882 on default made in payment, proceedings having been taken by the mortgagee under Regulation XVII of 1806, entitled the mortgagee to possess on after*

November 1806 between Hindus with power of entry and sale in the English form of land in the 24 Pergunnahs District (which mortgage therefore received the same effect as a mortgage by conditional sale) and the proceedings were perfect on or before 31st March 1873 as against the mortgagor whose right of possession determined on the 17th February 1866. Parcels of the mortgaged land had been sold

art 136 (1871, art. 136)

1 ———— and art 137—*Suit by purchasers against third persons for possession—*

LIMITATION ACT, 1877—continued

rights the purchaser is clothed **LAKSHMAN VINAYAK KULKARNI v BISANSING** 1 L R, 15 Bom., 231

2 ———— *Suit for possession of a tenure by a purchaser from the purchaser from a third person who bought at an auction but he obtained possession—Civil Procedure Code (1882), s 216—Confirmation of sale—Limitation Act art 139—In a suit for possession of a tenure by a purchaser whose vendor purchased it at a private sale from a third person who bought at an auction but*

first became entitled to possession, i.e. when the sale was confirmed and consequently the suit was not barred **MOHIMA CHUNDER BHATTACHARJEE v NOBIN CHUNDER ROY** 1 L R, 23 Cal, 49

3 ———— and art 137—*Ejectment—On the 26th of September 1867 A executed a con*

14th of November 1874 C purchased this land at a sale in execution of a decree which he had obtained

JAMIN 1 L R, 11 Cal, 229

4 ———— and art 144—*Hindu law—Joint family property—Suit to recover—Purchaser of a share of joint family property where vendor is out of possession—In a suit for a share of a joint family property where the claimant is out of possession the material issue is when did the pos*

by a purchaser of a share in a joint family property whose vendor is out of possession at the date of the sale is art 136 of sch II Act XV of 1877 **Per GHOSH J**—The rule applicable to such a suit is art 144 **RAM LAKSHI v DURGA CHARAN SEN** [1 L R, 11 Cal, 680]

——— art 137—*Mortgage of joint property—Share of co owner sold in execution of decree—Subsequent sale of the mortgaged property by all co owners—Redemption of mortgage—Suit for partition and redemption by purchaser of Court sale—Adverse possession—Three undivided brothers (B, R and A) mortgaged part of their joint property (plot 1) in 1870 and the rest (plot 2) in 1874. In 1875 B's share in both plots was sold in execution*

LIMITATION ACT, 1877—continued.

I. I. R. 5 All. 70. R. v. Panchay. R. v. Panchay. I. I. R. 5 All. 410. S. v. Panchay. R. v. Panchay. I. I. R. 5 All. 522. and R. v. Panchay. S. v. Panchay. I. I. R. 5 All. 110. referred to.

UMA SHANKAR v. KAIKA PLASON

[I. L. R., 6 All. 75]

art. 139 (1871, art. 140).

1. *Adverse possession.—Facts of case.*—In a suit to recover with interest and other benefits, a village allotted by the plaintiff to form part of his zamindari, and to be wrongfully held by defendant by virtue of the execution of a decree of the late Commissioner of the Northern Districts passed in 1849, the defendant pleaded that he held on a permanent lease subject to a fixed quit-rent, that he and his ancestors had held on that tenure since and previously to the Permanent Settlement, and that the quit-rent had been received from him by the plaintiff. *Held* that, as the defendant stated that the plaintiff had received kistabandi from him since 1857, the plaintiff's claim to eject could not be disposed of absolutely on the ground that it was barred by the Act of Limitations. *VAIDHANATH SUDHA NARAYANA v. NADIMINTI BHAGAVAT PATANJALI SHASTRI*. S. Mad., 120

2. *Adverse possession.—Receipt of rent.*—A Hindu died, leaving his widow, B, and mother, C. Adopted D. C granted a patti pottah to F of certain property belonging to the estate of A. During the minority of D, C received the rent from F, and afterwards D, on attaining majority, received rent from F by suits under Act I of 1859. Twelve years after attaining majority, D sued for cancellation of the patti lease, and for obtaining khas possession of the property. *Held* that the suit was not barred. *BHOWASSEE LAL ROY v. MAHIMA CHANDRA KARATI*

[4 B. L. R., Ap., 56; 18 W. R., 267]

See SHRIMOONATH SHAMA v. BHOWASSEE LAL ROY. 11 W. R., 109

3. *Adverse possession.—Cultivated and uncultivated lands.—Ghatwals.*—The owners of a patti of Bishnupore sued to set aside a survey award and alter a map (1855) which demarcated certain lands as cultivated and uncultivated belonging to Government, and in the possession of ghatwals. Certain ghatwali lands, part of the zamindari of Bishnupore, had been given up to the Government by the rai indars in 1802, and the ghatwals had since paid a quit-rent to Government for the same. The plaintiffs became purchasers of the patti in 1859 and raised for arrears. They admitted that, as to the uncultivated lands, they had never been in actual possession or in the receipt of any rents since they purchased, but they alleged that, from that time, the ghatwals fraudulently or dishonestly refused to pay them rents in respect of the uncultivated lands, as they had done to their predecessors; and that the ghatwals had encroached upon the uncultivated lands. The ghatwals, on the other hand, stated that they never had paid rent to the pattiindar, and that the lands were all included within those for which they paid a quit-rent to Government. *Held* (Loco.

LIMITATION ACT, 1877—continued.

J. dis. mind) that the ghatwals, if proved to have been the tenants of the plaintiffs or their predecessors, could not acquire a title against them by adverse possession of twelve years. *Per PRADHAN, C.J.*—The issues are: (1) whether the ghatwals paid rent for the cultivated lands to the pattiindar; (2) whether the cultivated or uncultivated lands form part of the patti estate; (3) whether the ghatwals were in possession of the uncultivated lands from 1859, or for a period exceeding twelve years before the commencement of the suit; (4) whether they paid rents for them to the pattiindar. *WATSON v. GOVERNMENT*

[B. L. R., Sup. Vol., 182; S. W. R. 78]

4. *Settled land.—Suit for land.—Court of justice.—No agreement.*—In a suit to establish a right to land, the cause of action arises when the defendant sets up an adverse title. The mere non-payment of rent does not constitute an adverse holding; but if a tenant openly sets up an adverse title and holds adversely, limitation runs. *RESONABE ROY v. JOGENDER CHANDRA BOY*

[6 W. R., 215]

5. *Settled land.—Adverse title set up by tenant.*—Where a landlord sued, after the lapse of more than twelve years from the date of his knowledge that a tenant was setting up a mokurari title, for a declaration that the alleged mokurari title was invalid. *Held* that the suit was barred by lapse of time. *NARAYAN HOSSEY v. LIOR*

6 B. L. R., Ap., 180

NARAYAN HOSSEY v. LIOR

[15 W. R., 232]

6. *Settled land.—Suit for possession.*—About twenty-five years before suit, B, being possessed of a house, allowed A to occupy it without rent, on condition that A would keep it in repair, and restore it to B on demand. Nine years afterwards, and without any demand having been made by B, A died, and his heirs continued to occupy the house on the same terms as A had done. In a suit brought by B against the heirs of A to recover possession of the house. *Held* that the suit was barred, being governed by the twelve years' period of limitation. *RAJABHAI v. SHAMA*

4 Bom. A. C. 155

7. *Settled or un-settled.*—Although the English rule of law as to the nature of the possession of a tenant for a term of years, who holds over, has been adopted in British India, the rule of limitation prescribed by 3 & 4 Will. IV. c. 27, by which time begins to run against the landlord from the date of his right of entry, has not been adopted in the Indian Limitation Act, 1877. If a tenant for years holds over in British India, time does not begin to run against the landlord until the tenancy on sufferance has been terminated. *ANANTLAL v. PER RAVULAL*. I. L. R., S. Mad. 424

8. *Settled or un-settled.—Tenure of land.—Effect of expiration of term.*—Where a tenant for years, who holds over, is in possession of the land, and the term of years expires, the rule of limitation prescribed by 3 & 4 Will. IV. c. 27, by which time begins to run against the landlord, does not begin to run against the landlord until the tenancy on sufferance has been terminated. *ANANTLAL v. PER RAVULAL*. I. L. R., S. Mad. 424

LIMITATION ACT, 1877—continued

7 ————— Possession Suit for —
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infructuous — *Held* that the purchaser was entitled to bring a suit to obtain actual possession but was bound to bring it within twelve years from the date of the sale the period prescribed by art 133 sch II of the Limitation Act (XV of 1877). The

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DUTT v RADHA KRISHNA SUREKHEL
(I L R. 10 Calc, 402)

8 ——— *Suit for possession by purchaser at sale in execution of decree* — A purchaser at a sale in execution not having applied to the Court for possession under s. 318 of the Code of Civil Procedure brought a regular suit to obtain possession of the property purchased. *Held* that although a remedy might be open to the plaintiff under s. 318, still he was not precluded from bringing a regular suit the remedies being concurrent. The words

9 ————— Suit for purchaser at sale
 11 execution of decree—Delivery of possession by
 Court—In 1867, R and G mortgaged certain lands
 to G R by a registered deed of that date. In 1870

GUMANCHAND v. DAKHMA HANMANI
 11 L R 12 Bom 678

10 ————— and art 136—*Suit for possession by assignee of purchaser at sale in execution of decree—Limitation on Act 1877 sch. II art 138 and not art 136 is applicable to a suit brought by the assignee of a purchaser of land at a Court sale to obtain possession of the land* ARG
MUGA R CHOCKALINGAM I L R. 15 Mad. 331

11 ————— Purchase at Court auc
tion and sale in execution of decree—Suit for

LIMITATION ACT, 1877—continued

possession of land—Cause of action—In a suit for possession of land instituted on the 1st April 1891, it appeared that the land in question had been purchased by the plaintiff in a Court auction held in execution of a decree on the 20th June 1879 and that the sale to the plaintiff was confirmed on the 31st March 1879 which was the date upon which the certificate issued. The plaintiff failed to prove that the judgment debtor was out of possession at or subsequently to the date of the sale. **Held** that the suit was governed by the Limitation Act section 133 that the date of the sale in that article means the date of the actual sale not the date of the confirmation of the sale and that accordingly the suit was barred by limitation. *Kishory Mohun Roy Chowdhry v Clunder Nath Pal L R 14 Cal 613*, and *Bhupur Chunder Buntlopaddhya v Soudamini Dhee L R 2 Cal 145* followed.

VENKATALINGAM v VEERASAMI

[I L R, 17 Mad, 89]

12 _____ Suit for possession by
f. i.

13 ————— Article applicable to suits
by assignee of auction purchaser—Assignee of
auction purchaser.—Art 138 of the Limitation
Act ('V of 1877) is not limited to suits by the

14 _____ and arts 91 and 95--
 it for possession of immovable property--Sust
 for cancellation of instrument--The purchasers of
 property sold in execution of a decree, having been
 resisted in obtaining possession of the property by a

Act but art 133 *Hazari Lall v Jadun Singh*

LIMITATION ACT, 1877—continued.

Overruled by *SUBBASIYAR MURAR v. HATHMANT CHAVIO DEPTANOR* . . . I. L. R., 24 Bom., 230

in which it was held that art. 118 would apply to such a suit.

1. — *Art. 141—Suit to set aside alienation by a widow—Cause of action.*—A suit to set aside alienations of ancestral property made by a childless Hindu widow during her life-tenancy may be brought at any time within twelve years from the death of the widow. *TILDER ROY v. PHOOLMAN ROY* [7 W. R., 450]

SINTOLNTH THAKOOR v. BILASSEE KOCKWICH [10 W. R., 276]

GOVAL MULLICK v. ONGOO CHUNDER ROY [11 W. R., 183]

GRIFFITHAMER SINGH v. INDOO KODER [17 W. R., 237]

CHUNDER KANTH ROY v. PEARY MOHUN ROY [1 Ind. Jur., O. S., 21]

S. C. PEARY MOHUN ROY v. CHUNDER KANTHA ROY Marah., 33:1 May, 69

ANAND MOHUN ROY v. CHUNDER MOHUN DASER [Marah., 517: 2 May, 648]

2. — *Reversioners—Cause of action.*—*B* purchased a patni mahal and devised it to his son *G*. *G* died after *B* childless and intestate, and leaving a widow, *S*, who also died, neither of the three having ever taken possession of the mahal. Plaintiff, as *G*'s nephew, sued to recover possession of the mahal. Held that his cause of action did not arise until the death of *S*. *RAM DOOLLEN SANDYAL v. RAM NARAN MONTOO* 7 W. R., 455

3. — *Cause of action—Hindu law—Alienation by widow.*—*A*, a Hindu widow, while in possession of the property left by her husband, sold a portion thereof. After her death, her daughter *B* succeeded to the property, but took no steps to set aside the alienation made by her mother. After her (*B*'s) death, her sons succeeded to the property, and instituted the present suit, after a lapse of thirty-six years from the death of *A*, but within twelve years from the death of *B*, to obtain possession of the property sold by *A*. Held (MITTER, J., dissenting) that the suit was barred. The cause of action arose when *B* succeeded to the property. *RAJKISHOR DUTT ROY v. GIRISH CHANDRA ROY CROWDHURY* 4 B. L. R., A. C., 136

4. — *Reversioners—Cause of action—Suit to set aside alienation.*—In a suit against a widow for acts of waste and alienations alleged to have taken place during the lives of the plaintiffs' mothers, who were then the next heirs to the property, Held that, as the mothers allowed more than twelve years to elapse, their cause of action expired, and that it did not revive in favour of the plaintiffs, who had since been born and had now arrived at majority. Held that, if by the death of the widow a new cause of action accrued to the plaintiffs as reversioners entitled to the property,

LIMITATION ACT, 1877—continued.

they might sue again; but they could not succeed in the present suit. *PERSHAD SINGH v. CHUNDER LALL* [15 W. R., 1]

5. — *Limitation Act (XIV of 1859), s. 1, cl. 12—Suit by reversioner on expiry of widow's and daughter's estate.*—Plaintiff sued in 1887 to recover property as part of the estate of his maternal grandfather, who died about 1845, leaving (1) a widow, who inherited the property and died in 1816; (2) his daughter by her, who took the property on her mother's death and alienated it to the defendants about 1850 and died before suit; and (3) the plaintiff's mother, who was his daughter by another wife. The plaintiff's mother made no claim on the property and died in 1883. Held the suit was not barred by limitation. *SAMPASIVA v. RAGAVA* [I. L. R., 13 Mad., 512]

6. — *Cause of action—Adverse possession—Suit for property inherited from father.*—The plaintiff sought to recover certain property which she inherited from her father, and which had been taken possession of by the defendant during the lifetime of plaintiff's mother. The lower Court dismissed the suit on the ground that it was barred by the law of limitation, plaintiff having failed to show that her mother was in possession at any time within twelve years before the suit. Held on special appeal that the suit was not barred. Until the death of her mother, plaintiff's alleged cause of action did not arise, and her right not being derived from or through her mother, the period of limitation could not be considered as having been running against her from the commencement of the adverse possession in her mother's lifetime. *ATCHAMMA v. SUBBA RAYUDU* [5 Mad., 428]

7. — *Estate held jointly by two widows—Cause of action—Reversioners.*—Where the estate of a deceased Hindu held jointly by his two widows survives, on the death of one of them, to the surviving widow alone, no cause of action can accrue to the reversioners until the death of the survivors even in respect of a moiety of the property. *GOBIND CHUNDER MOJOMDAR v. DULMER KHAN* [23 W. R., 125]

8. — *Reversioner—Cause of action—Adverse possession.*—Where, however, the estate is held by some one adversely to the widow, so as to give her a cause of action to recover it, a suit to recover it brought by her or the reversioners is barred after twelve years of such adverse holding. Where a cause of action with regard to the husband's estate has once accrued to a Hindu widow, who nevertheless fails to assert her rights, no new cause of action arises to the heirs after her death. *TABINI CHARAN GANGULI v. WATSON* [3 B. L. R., A. C., 437: 12 W. R., 413]

RAJKUNWAR v. INDERJIT KUNWAR [5 B. L. R., 585: 13 W. R., 52]

9. — *Female heir—Adverse possession—Suit by reversioner.*—Adverse possession against a Hindu female heir, which would bar her right of suit if she were alive, will equally bar that.

LIMITATION ACT, 1877—continued

than there

[I. L. R., 22 Bom., 133]

9. ——— and art. 144—Landlord
 and tenant—Rent note—Expiration of the term—
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 strict sense of
 the landlord
 when the period of the fixed lease expires CHANDRI
 v. DASI BHAI I. L. R., 24 Bom., 504
 art 140 (1871, art 141)

1. ——— Cause of action—Suit by
 reversioner against his ancestor's lessee—A rever-
 sioner's cause of action against his ancestor's lessee
 does not accrue until the expiration of the lease,
 unless the reversioner is evicted or deprived of his
 rent, or rent is received adversely to him by a
 stranger from the lessee. HIRONATH ROY v. INDOO
 BHOOGUN DEB ROY 8 W. R., 135

2. ——— Claim to share in immove-
 able property under will—The right to property
 left by will (assuming that the testator had power to
 dispose of it) falls into possession by Hindu law,
 from the death of the testator, and

LILAV 120 A

[I. L. R., 14 I. A., 103]

3 ——— and arts. 141 and 118—
 Suit by reversioner for possession by setting aside
 adoption—A Hindu governed by the Mitakshara
 School of Law died on the 12th May 1867, leaving
 him surviving a widow B and a brother R, who was
 admittedly the next reversioner. In July 1867 B
 adopted A and subsequently
 under Act
 an from the
 repayment
 in favour of
 and
 with
 was
 that

LIMITATION ACT, 1877—continued

the money was specifically advanced for, as well as
 the payment of decrees obtained

and in that suit no

amount due
 In the proceedings taken in execution of that
 decree M was opposed by L, who was afterwards
 held to be a benamidar for S, who claimed that
 the 8th November 1880 purchased

I. L. R., 14 Bom.,

fact
 that the adoption of D was invalid, that the ad-
 option by M to B was justified by legal necessity, and
 that L was the benamidar of S. It also appeared
 that M had himself become the purchaser of one
 of the mortgaged muzzahs. The lower Court gave
 M a decree declaring him to be entitled to recover the
 of the mortgage money from the five

acquired an absolute title by adverse possession
 adverse possession from the date of his adoption in
 1867 before the purchase by S in 1880. Held that,
 as B died within twelve years of the alleged
 adoption, although under art 118, sch II, Act
 XV of 1877 (which came into force before the
 adoption could become perfected by efflux of time),
 a suit for a declaration that an adoption was invalid
 should be brought within six years from the date
 when the adoption becomes known to the plaintiff,
 art 140 and

from the date
 estate fell into possession, and therefore that S
 was not barred by limitation from disputing D's
 title LALA PARSHU LAL v. MYLNE
 [I. L. R., 14 Cal., 401]

4 ——— Limitation Acts (XV of
 1877), sch II, art 118, and (IX of 1871), sch II,
 art 129—Suit by devisees to recover possession of
 property devised by will—Prayer to declare alleged
 adoption invalid. A suit by a devisee to recover
 possession of immovable property and to have an
 alleged adoption (on the strength of which the
 defendant is in possession) set aside, not being one
 merely to obtain a declaration, is governed by
 art 140 of the Limitation Act (XV of 1877). To such
 a suit art 118 does not apply, as the prayer for
 declaration is subservient or auxiliary only to grant-
 ing of the substantial relief. FANNYKUMA
 MANAYAT KESAB I. L. R., 21 Bom., 169

LIMITATION ACT, 1877—continued

23 Adverser p o r e s s o n . —
Limitation by Hindu widow — A title by adverse possession for more than twelve years accrues even during the life of a Hindu widow but it passes out of the widow and is made for the title to sue on part special provision is made for the title to sue on her death and the reversal of the title GYA PERSAD v. LAL PERSAD & HET NARAIN [L. I. R., 9 Calo, 93]

25 Reversionary, s u t b y —
Adverser possession against Hindu widow — In a suit instituted on the 26th August 1879 by the reversioner the defendant had forcibly dispossessed the widow of the property in 1864 and held it ever since Held that under art 141 of act II of Act XV of 1877, the reversioner was entitled to a fresh period of limitation from the death of the widow, although limitation had begun to run against her when Chander Chakraborty v. Jaser Chander Chakraborty 9 W. R. 605 has been intentionally modified by the Legislature by art 141 of act II of the Limitation Act of 1877 DWARKA MAH GURTA v. KOTLOMORI DASI [12 C. I. R., 548]

26 Adverser — Hindu mother — Reversioner — Semble, — That in Hindu law where a mother succeeds to property as heir of her son and her right thereto becomes barred by adverse possession, the next heirs of her son on her death will have twelve years therefrom in which to sue for possession of the property KORTI-MONI DASSIA v. MANICK CHANDIA JADABAR [L. I. R., 11 Calo, 791]

share was barred Per WILSON J — Art 141 of act II of Act XV of 1877 refers to suits by persons claiming on the death of a Hindu or Mahomedan female, under an independent title in the same way as, in respect of suits by remaindermen reversioners, and defendants were the brother and a sister and a step-mother of the plaintiffs As regards the claim of the plaintiffs to their shares in the estate of their mother,

LIMITATION ACT, 1877—continued

found the reversioner The proviso is construed dismissal — His claim therefore failed not only as to his share by inheritance but, for similar reasons as to the share acquired by him from the defendant donor art 111 in the schedule to Act XV of 1877, fixing the date of the female heir's decease as the starting point for limitation, did not alter the existing law as to the effect of a decree adverse to the predecessor as re-presenting the estate nor did it give a new starting point to the successor, nor did art 142 in the schedule to Act IX of 1871 HARI NATH CHATURVEDI v. MOTILALMOHUN GOOWAMI [L. I. R., 21 Calo, 8]

See TRIBHUVAN SURDAS KRAY v. SRI NARAIN [L. I. R., 20 AN, 341]

and PANKAJI CHOWDHARI v. PANDURAM DUTTA [L. I. R., 23 Calo, 636]

held it for about seventeen years This she did not withdrawing the claim of the son's widow, whose suit against her for the property was dismissed on the ground of limitation in 1876 Before her death she transferred part of the property by gift, and was said to have transferred another part by will On a question as to the capacity in which she had taken and retained possession it was found that she had done so absolutely and without any assertion of a right which she had not to a widow's estate but by the reversal of the law when the son's widow joined were held barred by limitation, on the ground that the possession taken had been adverse to them Not only was any

WAP v. MANOHAR NATH LAOHAN KUNWAR v. AKHAT SINGH [L. I. R., 23 Calo, 445]

to a property and died subsequently, leaving him surviving his widow S who lived with her brother The property remained in the possession of J, the widow of K In 1863 J sold the property to the defendants, who entered into possession forthwith In 1874 J died and subsequently S died In 1886 the plaintiff as reversionary heir sued to set aside the alienation made by J in 1863 to the defendants Held that the plaintiff's suit was barred The adverse possession of J and her aliases for more than twelve years during S's life was a bar, not only to S, but also to the claim of the reversionary heirs on her death BARE v. BHIRKAI, BHIRKAI v. BHIRKAI [L. I. R., 14 Bom., 317]

LIMITATION ACT, 1877—continued.

of the reversioner **NOBIN CHUNDER CHUCKERBUTTY v. GURUPERSAD BOSE**

[**B. L. R., Sup Vol., 1008**

S. C. NOBIN CHUNDER CHUCKERBUTTY v. ISSUR CHUNDER CHUCKERBUTTY . . . **9 W. R., 505**

overturning **AMEER ALI v. MORENDRO NATH BOSE, BEHARY KOOMAREE v. MORENDRO NATH BOSE, SUDODARA BIBER v. MORENDRO NATH BOSE**
[**3 W. R., 271**

JEONATH BHUGGUT v. ROOPA KCONWUR

[**2 W. R., 273 note**

and **HARADRUN NAUG v. ISSUR CHUNDER BOSE**

[**8 W. R., 223**

and followed in **RAM KANAI ROY CHOWDREY v. TRILCHAN CHUCKERBUTTY** **1 B. L. R., S. N., 12**

PABUBUTTY MOYLESSA v. RAJOO

[**W. R., 1864, 88**

RAM DYAL GOSSAIN v. KATTANKE DEBIA

[**8 W. R., 256**

BRINDA DABEE CHOWDHRAIN v. PEARRE LALL CHOWDREY

9 W. R., 460

RASH BIPHARE LALL v. BURNESSE NATH

[**10 W. R., 30**

CHUNDER NATH SEIN v. ANUNDOMOTEE DOSSER

[**11 W. R., 289**

GUNESH DUTT v. LALL MUTTER KOORE

[**17 W. R., 11**

MOHINA CHUNDER ROY CHOWDHURI v. GODESI NATH ROY CHOWDHURI . . . **2 C. W. N., 162**

10. ————— Reversioners—Cause of action—Where a Hindu widow, who takes by inheritance from her husband, is dispossessed, the

LIMITATION ACT, 1877—continued.

have run against the plaintiff's claim during the lifetime of S, who in the absence of proof that she had received only maintenance as distinguished from participation in the profits of the estate, must be presumed to have had possession of the share in the estate which she inherited as her husband's widow **Quere**—Whether, if N had been considered as having relinquished her rights she would not, at the time of the relinquishment have been barred by limitation **AMBULAL BOSE v. RAJVEERANT MITTAR** **15 B. L. R., 10; 23 W. R., 214**
[**L. K., 2 L. A., 113**

11. ————— Reversioner—Hindu widow
—Where after the death of a Hindu who had been separate in estate from his brothers and during

the Mitakshara law, the possession by the nephews being adverse to the widow, the claim of the reversioner on her death was barred **GOPAL SINGH v. KANHYA LALL SAHEBZADA**
[**2 B. L. R., Ap., 14; 11 W. R., 9**

12. ————— Reversioner—Hindu widow
—Cause of action—Adverse possession—A Hindu

for recovery of the half share which her sister had sold. The defence set up was that the suit was barred by lapse of time, as the plaintiff's cause of action arose in 1835, or more than twelve years before the institution of the suit. **Held** (following a dictum in the Full Bench ruling in **Nobin Chunder Chuckerbutty v. Gurus Persad Doss, B. L. R., Sup Vol., 1008**) that the words "cause of action" in cl. 12, s. 1, refer, not to the new cause of action which accrues to the reversioner, but to the "cause of action" which accrued to the tenant for life, and that the suit, having been brought after a lapse of more than twelve years after the death of the tenant for-life, was barred **GANGA CHARAN ROY CHOWDREY v. JAGANNATH DUTT**
[**3 B. L. R., A. C., 208; 12 W. R., 97**

13. ————— Suit by reversionary heirs
—Possession by adopted son—A Hindu widow, in 1824, assumed to adopt a son to her husband, and such son and after him the defendant his heir, was put in possession of the properties in suit. The widow died in 1861. The suit was instituted in 1866

SEINATH GANGOPADHYA v. MAHESH CHANDRA ROY
[**4 B. L. R., F. B., 3; 12 W. R., F. B., 14**

14. ————— Relinquishment by Hindu widow—Cause of action by heirs—Where a widow relinquished her right to her husband's property in

LIMITATION ACT, 1877—continued.

[illegible]

LIMITATION ACT, 1877—continued.

schedule to Act XV of 1877, has not made any alteration in the law as laid down in the last preceding rule. HANUMAN PRASAD SINGH & BHAGAVATI PRASAD
[T. T. R., 19 VII, 357]

40. *Adverse possession—Suit*

by retention to find female heir — where property which should by law be in the possession of a female heir is held adversely to such heir by a trespasser, the possession of the trespasser is

[T. L. R., 20 Apr, 42]

than twelve years. The period of twelve years expired before the Limitation Act (IX of 1871) came

him, the defence was that the suit was barred by

art. 142 (1871, art. 143).

See ONUS OF PROOF—IMITATION AND AD.

1. When a suit to establish his title and to recover possession of property is brought by a person who has been dispossessed under a sale in execution of a decree against other persons, and no summary order has been made determining the property liable to be sold, the court may, in the absence of any objection, make an order for sale of the property in execution of the decree.

Heid that he was not bound to do so, but that he was entitled to file a regular suit to establish his title and recover possession at any time within twelve years from the date of the dispossession under c. 12, § 1. LATONARD AKADEMIK & LATONARD

[6 BOMM., A. C., 138]

LIMITATION ACT, 1877—continued.

1. By the Privy Council in appeal on the ground of limitation in the suit was not barred. The limitation was applied to the mortgage, would have been a bar to the suit, and to the immovables made the subject of the limitation to commence from the date of the mortgage of the land to the adverse party. The Privy Council, however, held that the limitation was not applicable to the mortgage, if it had done so, would not have been applicable to the plaintiff, as the mortgage was not derived from or through the plaintiff. The Privy Council, however, held that the mortgage was derived through their husband and on the death of the surviving widow. *Itchenodas V. Itchenodas & Parvathi* [L. R., 23 Bom., 735 3 C. W. N., 631]

30.

Not by reservation to re-convertible property alienated by a Hindu female.—*Itchenodas V. Itchenodas & Parvathi* (L. R., 23 Bom., 735 3 C. W. N., 631). A Hindu female alienated her property by a mortgage to a Hindu male, and the mortgage was not barred by the limitation act (XV of 1877). The Privy Council, however, held that the mortgage was not barred by the limitation act, as the mortgage was not derived from or through the plaintiff. The Privy Council, however, held that the mortgage was derived through their husband and on the death of the surviving widow. *Itchenodas V. Itchenodas & Parvathi* [L. R., 23 Bom., 735 3 C. W. N., 631]

31. *Not by reservation to re-convertible property alienated by a Hindu female.*—*Itchenodas V. Itchenodas & Parvathi* (L. R., 23 Bom., 735 3 C. W. N., 631). A Hindu female alienated her property by a mortgage to a Hindu male, and the mortgage was not barred by the limitation act (XV of 1877). The Privy Council, however, held that the mortgage was not barred by the limitation act, as the mortgage was not derived from or through the plaintiff. The Privy Council, however, held that the mortgage was derived through their husband and on the death of the surviving widow. *Itchenodas V. Itchenodas & Parvathi* [L. R., 23 Bom., 735 3 C. W. N., 631]

32.

Not by reservation to re-convertible property alienated by a Hindu female.—*Itchenodas V. Itchenodas & Parvathi* (L. R., 23 Bom., 735 3 C. W. N., 631). A Hindu female alienated her property by a mortgage to a Hindu male, and the mortgage was not barred by the limitation act (XV of 1877). The Privy Council, however, held that the mortgage was not barred by the limitation act, as the mortgage was not derived from or through the plaintiff. The Privy Council, however, held that the mortgage was derived through their husband and on the death of the surviving widow. *Itchenodas V. Itchenodas & Parvathi* [L. R., 23 Bom., 735 3 C. W. N., 631]

33.

Not by reservation to re-convertible property alienated by a Hindu female.—*Itchenodas V. Itchenodas & Parvathi* (L. R., 23 Bom., 735 3 C. W. N., 631). A Hindu female alienated her property by a mortgage to a Hindu male, and the mortgage was not barred by the limitation act (XV of 1877). The Privy Council, however, held that the mortgage was not barred by the limitation act, as the mortgage was not derived from or through the plaintiff. The Privy Council, however, held that the mortgage was derived through their husband and on the death of the surviving widow. *Itchenodas V. Itchenodas & Parvathi* [L. R., 23 Bom., 735 3 C. W. N., 631]

34.

Not by reservation to re-convertible property alienated by a Hindu female.—*Itchenodas V. Itchenodas & Parvathi* (L. R., 23 Bom., 735 3 C. W. N., 631). A Hindu female alienated her property by a mortgage to a Hindu male, and the mortgage was not barred by the limitation act (XV of 1877). The Privy Council, however, held that the mortgage was not barred by the limitation act, as the mortgage was not derived from or through the plaintiff. The Privy Council, however, held that the mortgage was derived through their husband and on the death of the surviving widow. *Itchenodas V. Itchenodas & Parvathi* [L. R., 23 Bom., 735 3 C. W. N., 631]

LIMITATION ACT, 1877—continued.

1. II. 10 I. A., 140
11. II. 17 Cpl., 187

It is not, as you say, a "fact" that the world is not a flat disk.

I. L. R., 20 Cal., 560
(L. R., 20 I. A., 38)

case, and for redemption of Equity of redemption. The plaintiff said to redeem certain land which he alleged had been mortgaged by his father in 1838 to one B, the grandfather of the first defendant. The defendants alleged that the mortgage was executed not to B, but to the father of the second defendant, and that in 1863 the equity of redemption had been sold to the mortgagee by the widow of the mortgagor, the plaintiff being then a minor. The defendants contended that this suit was really to get aside the sale of 1863, and was barred by art. 41 of the Limitation Act (V of 1877). The second defendant also pleaded adverse possession. The plaintiff contended that the second defendant and his father had possession of the land merely as the agents or trustees of the mortgagee. Held that art. 41 of the Limitation Act did not apply, and that

It was further held. The necessity of impugning the sale of the land to the second defendant arose from the fact that the first defendant, by giving the plaintiff's claim to the second defendant, was estopped from denying the plaintiff's claim to the land. *Held*: that the second defendant, having entered into possession as mortgagor, could not afterwards set up an adverse possession as a defence to defeat the plaintiff's right to the land. **MAGNET GOVIND v. KONDY VALAD**
MARATHI I. L. R., 14 Bom., 279

and art. 144-Sail for

The plaintiff sued to recover possession of a certain land, together with mesne profits and recovery of possession, alleging that he had obtained possession under his title, and that his possession was disturbed by the defendant. Held that the suit fell under art. 142, and not art. 141, of the Limitation Act. **FAIR ANDERSON v. HARAJI GUNGASI** [I. L. R., 14 Bom., 468.]

art. 143 (1871, art. 144).

2. - *Stipulation by tenant to clear land.* Suit for breach of.—Limitation was held to apply in a case where it was stipulated in a lease that the tenant should clear a defined area in a certain time, the cause of action accruing when the defendant did not clear by the time specified.
TAYLOR & COOPER CHOWDHURY & SINGH KHAN
[7 W. R., 209]

3. *Branch of condition—Forfeiture—Alienation by Hindu widow.*—A Hindu widow, under an arrangement with her deceased husband's cousin, was in possession for life of a share of ancestral property of her husband's family, in which he jointly with the cousin had held a share in his lifetime. This share she sold as if she had held an absolute interest, and the purchaser's name was entered, instead of hers, in the revenue records; but no change of possession took place till her death. To a suit brought by the cousin's heirs to recover the property purchased from the widow, more than twelve years after the sale, but less than twelve years after the widow's death, the defence was limitation under Act IX of 1871, *sch. II, cl. 134*, commencing from the date of the sale, there having been, it was alleged, "a branch of condition or forfeiture" within the meaning of that clause. By the terms of the arrangement contained in a *solehnama*, the widow was to have no power to alienate, and after her death her share was to belong to the cousin. *Held* that these terms prohibited only such an alienation by the widow as would prevent the cousin's succeeding after her death, and the alienation made was good for the widow's lifetime. There was no condition against such an alienation; and if there had been, there was neither any rule of law, nor anything in the words used in the *solehnama*, attaching forfeiture to the breach of such a condition. *Held* accordingly that *art. 114* did not apply, and the suit was not barred by limitation. *SANODRA v. RAI JANG BAHADUR, LUTCHMAN SAHAI CHOWDHURY v. RAI JANG BAHADUR* 1 L. R., 8 Calc., 224; 1 L. R., 8 I. A., 210

LIMITATION ACT, 1877—continued

second division: KALLY CHURN SHANOO : SECRETARY OF STATE FOR INDIA IN COUNCIL

[I L R, 6 Calc, 725 8 C L R, 90]

14 ——— and arts 133, 144—*Discontinuance of possession*—In a suit to recover possession of a house the plaintiffs alleged that their predecessor in title had permitted the father of

by virtue of the gift. *Held* that the suit was barred by limitation under Act XV of 1877 sch II art 142. The meaning of art 142 is that where there has been possession followed by a discontinuance of possession time runs from the moment of its discontinuance whether there has or has not been any adverse possession and without regard to the intention with which or the circumstances under which possession was discontinued. Arts 139 and 142 of Act XV of 1877 considered. GOBIND LALL SEAL v DEBENDRONATH MULLICK

[I L R, 5 Calc, 679. 5 C L R, 527]

cl 144 and not by cl 142 of the same schedule. In such a case the owner of the property, who has accorded the permissive occupation cannot be said to have 'discontinued' the possession. GOBIND LALL SEAL v DEBENDRONATH MULLICK

[I L R, 6 Calc, 311 7 C L R, 181]

15 ——— *Proprietors having refused at the first regular settlement to engage, and others having been admitted as malgizars of the land—*

not required to be proved in order to maintain a defence. At the regular settlement in the Delhi District (1843) the plaintiffs' ancestors ex malgizars of a plot on which the rent free tenure had been

LIMITATION ACT, 1877—continued

farm from the Collector for the period of settlement, —*Held* that there had been a dispossession or discontinuance of possession within the meaning of art 142, and that whether any proprietary right had existed or not in the plaintiffs' ancestors the twelve

dispossessed
MANULLA
ale, 137

[I L R, 10 A 148]

16 ——— *Suit for possession. Dispossession during unexpired lease by plaintiff's predecessor*—In a suit brought by the plaintiff in 1880 to recover possession of certain lands from which his predecessor in title had been dispossessed, in which suit the Court of first instance found that the defendant had dispossessed the plaintiff's father in 1860 during the unexpired term of a lease granted by the plaintiff's father to a ticcadar —*Held* that the preponderance of authority in India was in favour of the view that limitation ran from the date of the expiry of the ticca and not from the time when the defendant had been held by the Court of first instance to have dispossessed the plaintiff's father. SURE SHY ROY : LUCHMESHVAR SINGH

[I L R, 10 Calc, 577]

17 ——— *Suit for possession of im-*

in No 142 sch II Limitation Act 1877, and not in No 91 of that schedule. RAMASWAMI PANDY v RAGHUBAR JATI

I L R, 5 All, 490

18 ——— *Symbolical possession*—On the 7th November 1868 certain property was purchased by one G D B at a sale held in execution of a decree obtained against one J G. On the 8th January 1873, the purchaser obtained a sale certificate and on the 10th August 1873 was put into symbolical possession of the property through the Court. On the 3rd March 1875 the plaintiff, in execution of a decree obtained against G D B, purchased this property, symbolical possession of the property being given to him by the Court on the 31st March 1875. On the 7th August 1885, the plaintiff brought this suit to recover possession of this property alleging that he had been dispossessed therefrom on the 13th July 1885 by the defendant No 2 who had taken an ijara of the property from the son of J G. The defence set up was limitation. *Held* that on the principle laid down in *Jugga Bundhu Mukerjee v Ram Chunder Bysack*, I L R 5 Calc, 534 the suit was not barred. *Krishna Lal Dutt v Radha Krishna Surkhet* I L R 10 Calc, 402 overruled. JOGENDR MITTER v PURNANUND GOSSAMI

I L R, 16 Calc, 530

DHARY v BARHAM DEO PERSHAD

[4 C W, N., 297]

19 ——— *'Dispossession'*—Where the plaintiffs were proprietors of land, but declined to engage for the land revenue, in consequence of

LIMITATION ACT, 1877—continued.

1. IMMOVEABLE PROPERTY—continued.

out of the "kherij jamabandi purbhare," to be levied from certain mchals and foris mentioned in the sanad. The allowances were paid till the death of the plaintiff's father on the 26th December 1859, when the Collector of Thana stopped them. On the 23rd December 1870, the plaintiffs sued to establish their right to the grant and to recover six years' arrears of the allowances. The defendant pleaded that the suit was barred by the law of Limitation. The question for consideration was whether the suit was governed by cl. 12 or cl. 16 of s. 1 of the Limitation Act (XIV of 1859). *Held* (per SARGENT, J.) that the grant in question was of the nature of immoveable property, and that the suit therefore fell within the provisions of cl. 12 of s. 1 of the Limitation Act (XIV of 1859). In using the expression "subject of the suit" in the rule laid down by the Privy Council in the Toda Giras case (*Fatesangji v. Desai Kallianrayaji, L. R., 1 I. A., 34*), their Lordships intended to include in it all the facts which determine the nature of the plaintiff's claim, and not merely of the allowance itself, and to confine the application of Hindu law to those cases in which the "subject of the suit" has such a distinctive Hindu character as that only Hindu law and usage can be legitimately invoked to determine its quality and nature. It is the fixed and permanent character of an allowance from whatever source derived, which by Hindu law entitles it to rank with immovables. Here the grant, from the object which it had in view, was to be deemed to be one in perpetuity, and the fund out of which this perpetual allowance was to be paid was derived from a permanent source. It had therefore all the characteristics of permanency and durability which were essential to bring it, according to Hindu law, within the term "immoveable property." *Held* (per MELVILLE, J.) that the allowance in question was not immoveable property, and that the suit therefore did not come within the provisions of cl. 12 of s. 1 of the Limitation Act (XIV of 1859). From a consideration of the judgment of the Privy Council in *Fatesangji v. Desai Kallianrayaji, L. R., 1 I. A., 34*, it would appear that the rule which their Lordships intended to lay down is this, viz., that, whenever it is possible to do so, the terms "immoveable property" and "interest in immoveable property" in Act XIV of 1859 must be interpreted, on general principles of construction, with reference to the nature of the thing sued for, and not to the status, race, character, or religion of the parties to the suit; but that in exceptional cases, in which the thing sued for is of such a special and exceptional character that its nature cannot be determined without reference to the special and peculiar law of a particular sect or class, in such cases, and in such cases only, the law of such sect or class may properly be referred to as furnishing a guide to the determination of the question. The Privy Council has thus laid down a rule and an exception, and the question in every case must be whether the rule or the exception applies. The rule is that the terms "immoveable property" and "interest in immoveable property" are to be held to include, not only land and houses, and

LIMITATION ACT, 1877—continued.

1. IMMOVEABLE PROPERTY—continued.

such other things as are physically incapable of being moved, but also such incorporeal hereditaments as issue out of, or are connected with, immoveable property properly so called, and which therefore savour of the reality, e.g., rights of common, rights of way, and other profits in *alieno solo*, rents, pensions, and annuities secured upon land,—all these clearly constitute an interest in immoveable property. Pensions and annuities not secured upon land, houses, or the like, as clearly do not constitute such an interest. When a classification can thus be made, it ought to be so made without reference to the character of the party claiming the right. But there may be cases in which the test prescribed by the rule fails, or is very difficult of application, and then will come in the operation of the exception to the rule, and it may become the duty of the Court to seek for guidance in some arbitrary definition contained in the religious law of the claimant, e.g., in the instance of an hereditary office in a Hindu community incapable of being held by any person not a Hindu. The claim now in question is a claim to an annuity granted by a Hindu sovereign to a Hindu temple. The annuity is not made a charge upon land, and it is not therefore, according to general principles of construction, immoveable property. That being so, it is not necessary to go further. COLLECTOR OF THANA v. KRISHNANATH GOVIND. I. L. R., 5 Bom., 322

Held, by a Full Bench on appeal under the Letters Patent, that the grant made by the sanad was "nibandha," and that the subject-matter of the suit was immoveable property, or an interest in immoveable property, within the meaning of the Limitation Act (XIV of 1859), s. 1, cl. 12. *Held* also that the Hindu law might be properly resorted to for the purpose of determining whether the subject-matter of the suit was immoveable property (i.e., nibandha) within the meaning of the Limitation Act (XIV of 1859), s. 1, cl. 12. Assuming that it was incorrect to apply Hindu law to ascertain the nature of the grant in question, nevertheless held that the grant was an interest in immoveable property within the meaning of the Limitation Act (XIV of 1859), s. 1, cl. 12. The grant savoured throughout of locality, and was undoubtedly irresumable, inalienable, and perpetual. The Indian Legislature did not intend to exclude such property from s. 1, cl. 12, of the Act. The Indian Legislature, which passed the Limitation Act (XIV of 1859), has not given any explanation or definition in the Act of the phrase "immoveable property," but has left suitors to their former ideas on the subject. Under these circumstances, it would be a hardship upon them to construe the Act inconsistently with such ideas, inasmuch as they were furnished with no guide which could have led them to suppose that "immoveable property," according to Act XIV of 1859, meant anything less than what they had previously known as such. And that the Indian Legislature were not disposed to be very harsh, is shown by its subsequent more fully developed legislation on the subject of limitation, which to haks and other periodical payments assigns the twelve years' limit. A pension or other periodical payment or allowance granted in permanence is

LIMITATION ACT, 1877—continued

3 ————— Act IX of 1871 s. 23—
Breach of condition in mortgage—Suit for ejectment of mortgagee—Contracting breach of contract—In November 1873 M sued for the cancellation of a deed

feature of the mortgage. It did not appear that any payments of the annuity had been made. The plea of limitation having been taken the lower Courts held that the suit was within time as the case fell within cl. 148 sch. II Act IX of 1871. It was held in special appeal that assuming that they were in error in so holding the case was governed by cl. 144 and the provisions of s. 23 enabled the plaintiff to treat each failure to pay the stipulated annuity as a new breach giving a new right to eject and that the suit was therefore clearly within time. **SADHA v. BHAGWANI** 7 N. W., 53

4. ————— Agreement to pay annual fees—Right of possession in default—Suit for possession—The purchasers of certain land agreed

paid the fees and more than twelve years after the first default the vendors sued them for possession of the land they were entitled to. *Held* that the suit, being governed by No. 143 sch. II of Act XV of 1877 and more than twelve years having expired from the first breach of such agreement was barred by limitation. The difference between s. 23 of Act IX of 1871 and Act XV of 1877 pointed out. **BHOJRAJ v. GULSHAN ALI** 1 L. R., 4 All., 493

art 144 (1871, art 145, 1859, s. 1, cl. 12)

Col

1 IMMOVABLE PROPERTY

5197

2 ADVERSE POSSESSION

5204

See ONUS OF PROOF—LIMITATION AND ADVERSE POSSESSION

[L. R. 19 Cal., 680

1 L. R. 14 Bom., 458

1 L. R. 14 Bom., 96

1 L. R., 18 Bom., 513

See POSSESSION—ADVERSE POSSESSION

[1 L. R. 21 Bom., 509

See SALE FOR ARREARS OF REVENUE—INCUMBRANCES—ACT VI OF 1869

[1 L. R., 14 Cal., 109

1 IMMOVABLE PROPERTY

1 ————— *Immovable property—Toda gras hak*—The expression "immovable property" in Act XIV of 1859 s. 1 cl. 12 is not to be construed as identical with "lands or hereditaments"

LIMITATION ACT, 1877—continued**1 IMMOVABLE PROPERTY—continued**

It comprehends all that would be real property according to English law and possibly more. A *toda gras hak* being a right to receive an annual payment the liability for which is not a mere personal liability but one which attaches to the land in whose hands the village may pass is an interest in immovable property within the meaning of cl. 12 s. 1 Act XIV of 1859. **FUTTEH SANGJI JASWANTSANGJI v. DESAI KULLIANRAJI HAKCOMUTRAJI**

[13 B. L. R., 254 10 Bom., 261
 1 L. R., 11 A., 34 21 W. R. 178

Overruling decision in **PATESANGJI v. DESAI KALYANRAJI** 4 Bom., A. C., 189

2. ————— Immovable property—

Fees paid to hereditary office holder—The clause of the Limitation Act (XIV of 1859) which was applicable to a suit to recover fees payable to the incumbent of an hereditary office such as that of a village *Joshi* was cl. 12 and not cl. 16 of s. 1 of that Act. **Krishnabhat v. Kapabhat** 6 Bom. A. C. 137 followed. The meaning of the term immovable property as used with regard to Hindu law discussed. **BALVANTRAY alias TATIAJI BAPAJI v. PURSHOTAM SIDHESWAR** 9 Bom., 89

3 ————— *Immovable property—Suit for dues of hereditary office*—A suit to recover payment of sums claimed by certain persons as hereditary officers and arising out of a grant by the sovereign proprietor of the territory by which the possessors thereof were bound to contribute to the maintenance of such hereditary officers *held* to

4. ————— Suit for share of hereditary

1 L. R., 14 Cal., 109

1 L. R., 14 Cal., 109

1 L. R., 14 Cal., 109

1 L. R., 14 Cal., 109

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1 L. R., 14 Cal., 109

1 L. R., 14 Cal., 109

LIMITATION ACT, 1877—continued.**1. IMMOVEABLE PROPERTY—continued.**

solehnama and to recover half of the value of two trees which the plaintiff had cut down and appropriated. *Held* that, as the suit was not for the recovery of rights and interests in immoveable property, to which cl. 12, but to set aside a solehnamah, to which cl. 16, of s. 1 of Act XIV of 1859 applied, and for damages, the suit to set aside the solehnamah was barred by limitation under cl. 16. **HANOOMAN PERSHAD v. SURUBJEET SINGH** . 4 N. W., 167

17. ——— *Mortgage of house "exclusive of land"—Interest in immoveable property.*—A bond whereby "the superstructure of a house exclusive of the land beneath" is hypothecated creates an interest in immoveable property within the terms of the Limitation Act, the apparent intention being to mortgage the existing house and not merely the materials. **NARAYANA PILLAY v. RAMASAWMY THAVUTHARAN** . 8 Mad., 100

18. ——— *Immoveable and moveable property.*—In the year 1857 *A* died, leaving a son, the plaintiff *B*, and the defendants *C* and *D*, his widows, him surviving. *C* took possession of all *A*'s property. The plaintiff *B* was the son of *D*, and, shortly after *A*'s death, *D* gave birth to another son, the plaintiff *E*. In 1865 *D* instituted a suit against *C* and *B* and *E*, alleging that *A* had left a will. In this suit *C* claimed to be the heiress of *A*. No decree was made in the suit, which was compromised. In November 1877 *B* and *E* entered into possession of a shop which had belonged to their father, and which had been managed, during their minority, by the defendant *C*. In 1879 the plaintiffs instituted the present suit, claiming to recover from *C* the property of *A* come to her hands. *Held* that, so far as the immoveable property was concerned, the case fell either under art. 120 or art. 144 of Act XV of 1877, sch. II; and as to the moveable property, under art. 89 or 90 of the same Act. **KALLY CHURN SHAW v. DUKEE BIBKE**

[I. L. R., 5 Cal., 692; 5 C. L. R., 505]

19. ——— *Saranjam—Right to possession and management of saranjam.*—The right to possession and management of a saranjam is an interest in immoveable property within the meaning of art. 144 of sch. II of the Limitation Act XV of 1877; and where the defendant had enjoyed that interest since 1866, at which date the plaintiff, who had been in correspondence with Government with reference to his claim against the defendant, was referred by Government to the Civil Courts, the plaintiff's claim was, in a suit brought in 1885, held to be barred by limitation. **NARAYAN JAGANNATH DIKSHIT v. VASUDEB VISHNU DIKSHIT** . I. L. R., 15 Bom., 247

20. ——— *Emoluments of hereditary office—Interest in immoveable property.*—A suit to recover a sum of money due by custom as an emolument of an hereditary office is not one for the possession of an interest in immoveable property. In 1888 a sum of money became payable, as marriage dues, to the holder of certain offices connected with a temple. Upon a suit being brought more than six years thereafter, namely in 1895, to recover the amount, it was

LIMITATION ACT, 1877—continued.**1. IMMOVEABLE PROPERTY—concluded.**

objected that the claim was barred by limitation. *Held* that such a claim is governed, not by art. 144, but by art. 120 of sch. II to the Limitation Act, and must, in consequence, be enforced within six years of the accrual of the right. **RATHNA MUDALIAR v. TIRUVENKATA CHARIAR** . I. L. R., 22 Mad., 351

21. ——— *Right of purchaser to have lands registered in his name—Nature of such right—Cause of action in respect of such right—Suit for declaration of such right—Vendor and purchaser—Limitation Act, sch. II, art. 120.*—Plaintiffs, having purchased certain lands in 1867, brought this suit in the year 1890 to obtain a declaration of their right to have the land registered in their name in the revenue records. The lower Courts dismissed the suit as barred under art. 144, sch. II of the Limitation Act (XV of 1877). *Held*, reversing the decree, that a right to be placed on the register was not an interest in immoveable property, and that art. 144 of the Limitation Act did not apply. The right is one which does not give rise to a cause of action until it is asserted or denied, and a suit for a declaratory decree in respect to it must be brought within a period of six years from that date. In the present case the right had not been asserted or denied until the suit was filed, and the suit was therefore not barred. **BHIKAJI BAJI v. PANDU**

[I. L. R., 19 Bom., 43]

2. ADVERSE POSSESSION.

22. ——— *Application of article.*—Art. 144 of sch. II of Act XV of 1877, as to adverse possession, only gives the rules of limitation where there is no other article in the schedule specially providing for the case. **MAHAMMUD AMANULLA KHAN v. BADAN SINGH**

[I. L. R., 17 Cal., 137
L. R., 16 I. A., 148]

23. ——— *Onus probandi.*—Under art. 144 of the Limitation Act (XV of 1877), it is not for the plaintiff to prove that he has been in possession within twelve years before suit, but it is for the defendant to show that he has held adversely to the plaintiff for twelve years. **NYAMTULA v. NANA WALAD FARIDSHA**

[I. L. R., 13 Bom., 424]

24. ——— *Adverse possession.*—*A*, *B*, and *C* were brothers. In 1846 and 1847, a partition was effected between *A* (since deceased) and *C* on the one part and *B* on the other, *C* being at the time a minor. *B* then obtained, and since held separately as his share, certain lands in the village of *K* among others. By a razzinama in 1852 the same quantity of land was confirmed to him as his share. In 1855 certain proceedings were taken, the object of which was to adjust the shares so as to make them equal in quality as well as in quantity, *B* continuing to hold nearly the same quantity of land as he did before. *C* attained his majority in 1854, and in December 1863 brought a suit against *B* for a re-adjustment of the partition completed in

LIMITATION ACT, 1877—continued**1 IMMOVEABLE PROPERTY—continued**

nibandha whether secured on land or not *COLLECTOR OF THANA v HARI SITARAM*

[I L R, 6 Bom, 546]

6 ——— Claim to easement —

Immoveable property—A claim to an easement is one relating to an interest in land and is governed by the limitation of twelve years *DEO SURUN POORY v MAHOMED ISMAIL*

24 W R, 300

7 ——— Immoveable property—

Jalkar Suit to establish—A jalkar is not an easement within the meaning of s 27 of Act IX of 1871 but is an interest in immoveable property

exclusive right of fishing in such water was barred by limitation *PAREUTHY NATH ROY CHOWDHREY v MUDRO PAROE*

[I L R, 3 Calc, 276 I C L R, 592]

8 ——— Suit for opening water-

course stopped by defendant—Interest in im-

[4 W R, 101]

9 ——— Suit for possession of

immoveable property—Suit for a declaration of

10 ——— Suit claiming exemption

to pay a certain sum annually as brought his suit

LIMITATION ACT, 1877—continued.**1 IMMOVEABLE PROPERTY—continued**

under Act XIV of 1859 s 1 cl 4 *BIHJANG MAHADER v COLLECTOR OF BELGAUM*

11 Bom, 1

11 ——— Agreement defining shares

of part as in immoveable property—Deed of compromise—An agreement by way of compromise of disputed title to immoveable estate under which shares are allotted to the parties thereto gives to each party a cause of action founded not merely upon contract within the meaning of Act XIV of 1859

ONE A. A. A. V. OF 1859 LALLA KAN SAKOY LALL v CHOWBAIN

22 W R, 287

13 ——— Trees—Interest in im-

moveable property—Trees are immoveable property, and a claim to connect a well thereto

14 ——— and s 26—Suit to re-

[I L R, 16 Bom, 353]

15 ——— Growing tree—Suit for

an area of trees at the end of a well

16 ——— Suit to set aside sale-

of land relating to a well

the plaintiff as proprietor was to receive half of the produce of a certain grove which right while the deed was in force the donors had agreed by a solahmah with the defendant to contribute for a yearly rent. The plaintiff sued to set aside the

LIMITATION ACT, 1877—continued.**2. ADVERSE POSSESSION—continued.**

owner.—The plaintiffs were in possession without title from 14th June 1870 to 19th September 1873; they were then dispossessed by a third person, but recovered possession by a decree against him in December 1880 and thereafter remained in possession till 14th September 1888, when they were ousted by the principal defendants. Thus, the plaintiffs' possession not aggregating to twelve years, it was contended on their behalf that the decree above-mentioned restoring them to possession did away with the effect of dispossession, so as to complete their title by adverse possession. *Held* that the possession of one trespasser could not be added on to that of another, and that the effect of the decree did not affect the position of the true owner. *Quære*—Whether art. 142 or art. 144 of the Limitation Act applied to the case, and on this question depended the further question whether the principal defendants' right had been extinguished under s. 28 of the Limitation Act, and therefore their dispossession of plaintiffs was illegal. *GURGO CHURN DUTT v. KRISHNA MONI GUPTA* . . . 2 C. W. N., 315

29. ——— *Adverse possession.*—*A* became a bairagi and went on a pilgrimage. He alleged that before his departure he made over his property to *B*, on the condition that it should revert to him on his return. *B* sold it to *C*. Upon his return after several years, *A* claimed the property from *C*, who refused to give up possession. *D* purchased *A*'s rights, and then sued the widow of *C* to obtain possession. She denied that the property was made over to *B* upon trust for *A* on his return, and contended that the suit was barred under cl. 12 of s. 1 of Act XIV of 1859. The lower Appellate Court held that it was not barred on the ground that *B*'s possession was not adverse. On special appeal, the case was remanded that it might be found whether *B* had been in possession in trust for *A*, or adversely to him, for more than twelve years. *JAGANNATH PAL v. BIDYANAND* [1 B. L. R., A. C., 114: 10 W. R., 172]

30. ——— *Suit for possession.*—*Interrupted adverse possession.*—In a suit to recover possession of immoveable property, the defence was adverse possession for more than twelve years, except for two short periods, during which plaintiffs had been put in possession by a Civil Court: first, under a decree of the High Court between the same parties, but that they had been dispossessed upon that decree being reversed on review; and second, under a misconception, by the Principal Sudder Ameen, of another order of the High Court in another suit between the same parties; but that they had again been dispossessed after appeal by defendant to the High Court. *Held per LOCH, J.* (GLOVER, J., dissenting), that plaintiff's possession during those two periods was not *bona fide*, and that the suit was barred. *MATI SINGH v. LILANAND SINGH* . . . 2 B. L. R., A. C., 173
S. C. MOTEE SINGH v. LULANAND SINGH [11 W. R., 49]

31. ——— *Temporary interruption of possession.*—*Wrongful possession given by Court*

LIMITATION ACT, 1877—continued.**2. ADVERSE POSSESSION—continued.**

to a third person.—*Restoration of possession to defendant.*—*Continuous adverse possession.*—In a suit brought to recover possession of certain land the defendant pleaded limitation. He had held possession of the land adversely to the plaintiff from 1881 up to the date of suit (2nd October 1895), with the exception of a period of three years (*viz.*, 4th April 1892 to 9th April 1895), during which he was dispossessed under a decree of a Civil Court of first instance obtained against him by a third person, which being reversed in appeal he was restored to possession on the said 9th April 1895. *Held* that the present suit was barred by limitation. The wrongful possession given by the Court to a third person did not (after possession had been restored to the defendant) prevent the statute from running during its continuance against the plaintiff and in favour of the defendant. *DAGDU v. KALU* [I. L. R., 22 Bom., 733]

32. ——— *Adverse possession.*—*Admission of lambardar to partition.*—Where the lambardar had clearly admitted in the wajib-ul-urz that there were shareholders paying the Government revenue through him, who cultivated sir land, although at the time he, the lambardar, has had sole right to the profit and loss,—*Held* that the claim of the shareholders to definition of their shares was not lost. *MEHTAB SINGH v. PURMA* . 3 Agra, 241

33. ——— *Adverse possession.*—*Insolvency.*—Suit by the Official Assignee of a deceased insolvent to recover a talukh conveyed (several years before his insolvency) by the insolvent, who was sole or chief acting executor of his father-in-law's will, as a security for his own debt to his father-in-law, not to any other person in trust for the benefit of any parties who might be entitled to the estate, but to the insolvent's wife, who was the tenant for life of the residue. *Held* that, in the absence of any proof of fraud, the widow's continuous and adverse possession for more than twelve years barred the suit. *COCHRAN v. HURROO-BOONDERY DEBIA* [4 W. R., P. C., 103: 6 Moore's I. A., 494]

34. ——— *Adverse possession.*—*Joint entry of names.*—In a suit by a Hindu widow for a declaration of right and title to dhurmutter land of which she asserted she had always been in possession, which she asserted she had always been in possession, but which defendant had got registered in his own name as well as in hers, and claimed to have been in possession of with his father since the death of the husband,—*Held* that the entry of plaintiff's name conjointly with defendant's was a declaration of at least joint title such as nullified a plea of bar by limitation by adverse possession. *DREPO DERIA v. GOBINDO DEB* . . . 16 W. R., 42

35. ——— *Suit by widow for share on partition of husband's estate.*—*Adverse possession.*—In a partition suit by a widow for the recovery of her husband's share of property, held during his lifetime jointly with his brother, although such suit be brought more than twelve years after her husband's death, her claim is not barred by the statute of

LIMITATION ACT, 1877—continued**2 ADVERSE POSSESSION—continued**

1847 f. - - - - - 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

IN MORE WAS BARRED BY LIMITATION *SRINIVASSIEY*
GAR v SRINIVASSARANGA CHARITYAR 4 Mad., 10

25 Adverse possession—The

satisfaction. Objection was made by a member of the family claiming ten of the villages as held by him and his ancestors under a mokurari grant for maintenance. An answer was put in and litigation followed resulting in a final decision by the civil authorities of the zillah that the claimant was not entitled to four out of the villages claimed and the proceeds were diverted to the payment of debts which were not his. He then sued for a declaration of his right and title to the four villages. Held that the possession of the political department had not been adverse to the plaintiff, and his cause of action did not arise till his title was devised and the proceeds diverted from his use. *COURT OF WARDS v BUN WAREE LALL THAKOOR* 15 W. R., 102

26 Suit for possession of land—Collector's possession not adverse to true owner—Act IX of 1871 sch II art 145 enacting that suits for possession of immovable property or any interest therein must be brought within twelve years from the time when the possession of the defendant or some person through whom he claims has become adverse to the plaintiff differs from the rule formerly in force under Act XIV of 1859 s 1 cl 12. The latter was that the suit must be brought within twelve years from the time when the cause of action arose and thus the former rule that, where the cause of action arose upon an alleged disposssession the burden was upon the plaintiff to show

has taken possession of land, it is the duty of the Collector after payment of the revenue and the expenses of the collection to pay over the surplus proceeds of the estate to the true owner. The Collector's possession does not become adverse to the owner by reason of his making this payment to another claimant. *KARAN SINGH v BAKAR ALI KHAN* I L R., 5 All., 1

[L R., 9 I A., 69]

27 Adverse possession—Attachment of vatan lands—Peshwa's Government—

certain vatan lands belonging to the plaintiffs family. The attachment continued till the year

LIMITATION ACT, 1877—continued**2 ADVERSE POSSESSION—continued**

1866 when the British Government made them khalsa or resumed them. The defendant in the meanwhile entered upon them as tenant to the Government and paid assessment thereon. In the year 1871 the lands were ordered to be restored to the plaintiffs. After this order of restoration the plaintiffs brought a suit against the co-jarncers for partition and obtained a decree. In the execution of this decree they were obstructed by the defendant who claimed the lands as his own. The plaintiffs thereupon brought a suit against the defendant in 1881 to eject the defendant and to obtain possession of the lands. The Court of first instance held the plaintiffs entitled merely to such assessment as might remain after payment of judi to Government. It further held that the defendant's possession had become adverse to the plaintiffs as the latter did not bring their suit within twelve years from the resumption of the lands by Government in 1866 since which time the defendant was to be considered as tenant or occupant under Government. From this decree the plaintiffs appealed and the lower Appellate Court was of opinion that by the order of restoration the plaintiffs were restored to the

relation continued. The British Government having succeeded to the trust continued to hold as trustees for the family of the plaintiffs their possession on therefore could not be made adverse by intimation or notice to the plaintiffs. It was not found that the defendant held the lands before the attachment by the Peshwas and the British Government could not be guardian or bailiff for the real owners. The plaintiffs put the defendant into a better position

the term computed from that time it was not barred—the inability of the plaintiffs to sue before 1871

management to the term of that management and nothing further. *TUKABAN v SUJANGIN GURU* [I L R., 8 Bom., 585]

28 and art. 142 and s 28—Decree obtained—Decree restoring possession to trespasser against dispossession by another trespasser, Effect of—Illegal dispossession by the true

LIMITATION ACT, 1877—continued.

2. ADVERSE POSSESSION—continued.

43. ———— *Possession of ijaradar—Effect of dispossession on zamindar.*—The zamindar or owner is bound by the dispossession suffered by his ijaradar. *BRINDABEN CHUNDER SIRCAR CHOWDHURY v. BHOPAL CHUNDER BISWAS* 17 W. R., 377

44. ———— *Landlord and tenant—Suit by occupancy-raiyat for recovery of his holding—Ouster, not by landlord—Twelve years' limitation.*—A suit brought by an occupancy-raiyat to recover possession of his holding in which the landlord is no party, and there is nothing on the record to show that the landlord had any hand in the ouster of the plaintiff, is governed by twelve years' limitation, though the defendant might claim to hold under the same landlord. *ERADUT v. DALOO SHIRKEH* 1 C. W. N., 573

45. ———— *Confirmation of title—Cause of action.*—The plaintiff sued for confirmation of his title to, and for possession of, a jote in the Nowabad mehal, deriving his title under a pottah from the ijaradar. The defendant's case was that he had bought the lands as a talukh, and been in possession accordingly; but finding that the lands had been surveyed as a part of the Nowabad mehal, he took a pottah from the ijaradar four years previous to the plaintiff's pottah. The defendant's pottah was found to be a forgery. *Held* that the plaintiff's cause of action arose solely from the title set up by the defendant under the pottah derived from the ijaradar, and not from the date when the defendant purchased the lands as a talukh. *SHAHABOODEEN v. NADUROOJUMA* [12 W. R., 44]

46. ———— *Lessee under Government.*—A claimed certain immovable property as lessee under a Government settlement made in 1859. B had been in possession for more than twelve years before the institution of the suit. *Held* that the suit was barred under cl. 12 of s. 1. *ASU MIA v. RAJU MIA* 1 B. L. R., A. C., 34; 10 W. R., 76

47. ———— *Adverse possession—Suit for ejectment by a jenmi—Defendant in possession under Government cowle.*—The plaintiffs sued for possession of land which was found to be their jenm. It appeared that the defendant had been in possession for more than twelve years under a cowle from Government, which provided that the grant of the cowle should not affect the jenmi's right, but that the defendant had never recognized the plaintiff's title. *Held* that the suit was barred by limitation. *MUNIAPPAN CHETTI v. MUPPIL NAYAR* I. L. R., 21 Mad., 169

48. ———— *and arts. 113 and 139—Agreement to occupy for a term—Permissive occupation—Expiration of term—Suit for possession.*—Plaintiffs sued in September 1893 to recover possession of a certain house from the defendants, resting their claim on a certain document, dated the 3rd May 1880, executed by the defendants' father M to the plaintiffs' father K. In this document M admitted that the house belonged to K and promised to vacate it at the end of two years from the date of execution. The document being presented for registration on the 18th

LIMITATION ACT, 1877—continued.

2. ADVERSE POSSESSION—continued.

May 1880, M denied its execution, but after inquiry the District Registrar ordered it to be registered. The lower Court dismissed the suit as barred by limitation (either by art. 113 or art. 144 of the Limitation Act XV of 1877). *Held*, reversing the decree and remanding the case, that the suit was not barred. By the agreement the tenancy or permissive occupation was to end on 3rd May 1882. Either under art. 139 or 144 the plaintiff had twelve years from that date within which to sue. *SHIV-RUDRAPPA KRISHNAPPA v. BAJAPPA*

[I. L. R., 23 Bom., 283]

49. ———— *Landlord and tenant—Suit for possession—Cause of action.*—The plaintiff stated that in the year 1862 he purchased a talukh in which some of the defendants then held an ijara for a term of years expiring in 1868. The talukh had previously been a khas mehal in the possession of the Government, and was bought by the plaintiff at an auction-sale held by the Collector. The plaintiff also stated that the ijaradar defendants, in collusion with the other defendants, had continued in possession of the lands held in ijara after the term of the ijara had expired, and had refused to give up possession thereof to the plaintiff. The Judge of the lower Appellate Court found that the defendants (other than the ijaradars) had been in possession previously to the sale in 1862, and he also found that there was no evidence to support the charge of collusion with the ijaradar defendants. He therefore dismissed the suit (which was brought in 1880) on the ground of limitation. *Held*, on second appeal, that the plaintiff's cause of action arose on the expiration of the ijara, and that the suit, whether governed by art. 139 or 144 of the Limitation Act (XV of 1877), was not barred on the ground of limitation. *Woomesh Chunder Goopto v. Raj Narain Roy*, 10 W. R., 15, cited. *KRISHNA GOBIND DHUR v. HARI CHURN DHUR*

[I. L. R., 9 Calc., 367; 12 C. L. R., 19]

50. ———— *Landlord and tenant—Notice by tenant claiming to hold under perpetual lease.*—The possession of a tenant for life is not rendered adverse within the meaning of Act XV of 1877 by a notice from the tenant that he claims to be holding on a perpetual or hereditary lease. *BENT PERSHAD KOERI v. DUDINATH ROY*

[I. L. R., 27 Calc., 156
4 C. W. N., 274]

51. ———— *Landlord and tenant—Adverse possession—Trespasser.*—A defendant has a right to set up the plea of tenancy and at the same time to rely on the statute of limitations. The plaintiff sued to recover possession of certain land. The defendant pleaded that it was included in a permanent lease granted to him in 1849 by the plaintiff's predecessor in title, and that the suit was barred by the law of limitation. It was found at the hearing that the land was not included in the lease. It appeared that there were disputes between the parties about the land since 1856, each asserting

LIMITATION ACT, 1877—continued.**2. ADVERSE POSSESSION—continued.**

limitations, unless the brother has for a period of twelve years before suit held adversely to her. **KIS-TOMONKE CHOWDHRY v. SIBCHUNDER CHOWDHRY** [Marsh, 186:1 Hay, 473]

36. ——— Adverse possession—A
Hindu of Tirhoot died in 1849, leaving two widows

S. C. JUDOGANSE KOZE v. GIBBHURUN KOZE
[12 W. R., 158]

37. ——— Hindu widow—Adopted

DAR v. ANAND MOHAN SARMA MAZOOMDAR
[2 B. L. R., A. C., 313]

38. ——— Two sisters, B and P, not
being heirs, took possession of ancestral property as
heirs on the death of their mother K. After a few

COUNTERCLAIMS BROSE FROM THE TIME THAT A quarrelled
with her sister and adopted a son. **BUNGSEEDHUR**
GHOSH v. TARINEE CHURN SINGH 3 W. R., 185

SHAMA SOONDERY DOSSEA v. TARINEE CHURN
SINGH 3 W. R., 194

39. ——— Impartible zamindari—
Succession—Adverse possession by one branch of

LIMITATION ACT, 1877—continued**2 ADVERSE POSSESSION—continued.**

that date until her death in 1877, the estate remained
in the possession of P. It was alleged that P. had

wife M, and that he, and not the defendant, was the
eldest surviving grandson of G, sued in 1881 to
recover the estate from the defendant. Admitting
that he was born in the lifetime of G, the plaintiff
pleaded that it was not open to him to sue for the
estate until the year 1870, when his father, his elder
brothers, and a son of his father's elder brother had
all died. Held that from 1829 limitation began and
continued to run against the descendants of M
VIJAYASAMI v. PERIASAMI 1. L. R., 7 Mad., 242

40. ——— Hindu law—Widow—
The holder of an impartible zamindari died in 1822,
leaving two widows and a daughter. The widows

the zamindari from him. Held, following **Vijaya-**
sami v. Periasami, 1 L. R., 7 Mad., 242, that the
suit was barred by limitation. **KOOLAPPA NAIK v.**
KOOLAPPA NAIK 1 L. R., 17 Mad., 34

41. ——— Widow in possession of
estate for dower—Suit by heirs for possession—
Adverse possession—If a Mahomedan widow, with-
out the consent of the heirs, takes possession of her
husband's estate in satisfaction of her dower, and
continues to hold it for forty years, the heirs of her
husband cannot intervene, and their claim must be
brought within twelve years, unless they prove that
the possession of the widow as to their shares was
permissive or fiduciary possession. **OOMBAO BEGUM**
v. HAMID JAN 3 Agra, 279

42. ——— Suit for possession of
jungle lands—Evidence of ownership—In a suit for
possession of jungle lands where there is no proof of
acts of ownership having been exercised on either
side, the court must find in favour of the
defendants made out a case of twelve years' adverse
possession. **LEELANUND SINGH v. BASHIRMOONISSA**
[16 W. R., 103]

See **SUNNUD ALI v. KURIMOONISSA**
[9 W. R., 124]

MOOCHER RAM MAJHEE v. BISSAYDHUR ROY
CHOWDHRY 24 W. R., 410

LIMITATION ACT, 1877—continued.

2. ADVERSE POSSESSION—continued.

alleged to belong in equal undivided shares to his *stanom* and that of the defendant and to be in the occupation of tenants. The cause of action was stated to have arisen in 1881 when partition was demanded by the Zamorin and refused by the defendant. In some instances the tenants in occupation represented the family, a member of which was at one time admitted by the Zamorin under a *demise* or *kanom*, and had attorned to the defendant; in other instances they were shown to have been admitted by the defendant on paying off the former tenant who had been admitted by the Zamorin. In all these instances the defendant intended the tenant who attorned to him to hold as his tenant to the exclusion of any claim by the Zamorin, but it was not shown that the Zamorin had any notice of such attempted usurpation on the part of the defendant. And on these facts the defence of limitation was raised on the ground that the land had been held for more than twelve years adversely to the Zamorin. Held (1) that Limitation Act, sch. II, art. 144, and not art. 142, was applicable to the suit, and that in the first class of cases referred to above, the tenancy under the Zamorin had not been determined, and that in the second class there had been no ouster of the Zamorin, and that consequently the suit was not barred by limitation. *ITTAPPAN v. MANAYIKRAMA*

[I. L. R., 21 Mad., 153]

57. ————— *Ijaradar, Dispossession of—Adverse possession—Zamindar, Suit by.*—Possession taken by a trespasser during the currency of an *ijara* lease does not become adverse to the zamindar (lessor) until upon the expiration of the term, and a suit for possession may be brought within twelve years of that date under the provisions of art. 144 of the Limitation Act. *Krishna Gobind Dhur v. Hari Churn Dhur*, I. L. R., 9 Calc., 367, followed. *SHARAT SUNDARI DABIA v. BHONO PERSHAD KHAN CHOWDHURY* . I. L. R., 13 Calc., 101

58. ————— *Adverse possession of limited interest in land.*—The manager of a Nambudri family in Malabar, having demised certain land on *kanam* in 1868, was removed from his position as manager in 1875. In 1883 his successor sued to eject the *kanam*-holders. Held that the suit was barred by limitation. *MADHAYA v. NARAYANA* [I. L. R., 9 Mad., 244]

59. ————— *Suit for possession—Redemption of mortgage.*—In a suit in 1887 to redeem a *kanam* for R62 of 1835, it appeared that in 1862 the mortgagee had received a renewal of his *kanam* for a larger amount, and that the defendant had produced the document of renewal in 1864 to the knowledge of the plaintiff in a suit to which the plaintiff was a party. Held that the defendant's possession had not become adverse from 1864 so as to make it necessary for the plaintiff to sue within twelve years, and that the suit was not barred by limitation. *Madhava v. Narayana*, I. L. R., 9 Mad., 244, distinguished. *RAIRU NAYAR v. MOUDIN* [I. L. R., 13 Mad., 39]

LIMITATION ACT, 1877—continued.

2. ADVERSE POSSESSION—continued.

60. ————— *Adverse possession—An outside person claiming an interest in an estate together with an undivided family—Inheritance to such owners.*—In a family of three undivided brothers, an estate was purchased by the eldest as manager, on whose application a fourth party, a sister's husband, was recorded in the revenue records as a co-proprietor with them. The latter, even if he by joining in the purchase had become entitled to an undivided fourth share in the estate, did not thereby become a member of the undivided family; and the members of it would not have had a right to succeed to his fourth share, which would have descended to his own heirs; the other three-fourths which he would not have inherited going by survivorship among the members of the family. A son of the eldest brother obtained, by the deaths of his father and uncles, sole possession of the whole estate. Held that he did not take the one-fourth share above mentioned by any right of inheritance, and that, in the absence of proof that his possession of it was by authority of the fourth recorded co-proprietor, his possession must be presumed to have been adverse to the latter and to any one claiming through him. It followed that a suit to obtain from those claiming through the son, who was now dead, the one-fourth share, brought more than twelve years after possession taken by the son, by a purchaser relying on a title through the fourth co-proprietor, was barred by limitation under art. 144 of the second schedule of Act XV of 1877. *RAMALAKSHAMMA v. RAMANNA* . I. L. R., 9 Mad., 482

S. C. COLLECTOR OF GODAVERY v. ADDANKI RAMANWA PANTULU . I. L. R., 13 I. A., 147

61. ————— *Suit for possession.*—On the 7th December 1863, A, in execution of his decree, purchased and obtained symbolical possession of a certain 4 annas share, the property of his judgment-debtor. The 4 annas share was at the time under a mortgage to B, who happened to be in possession of the share as lessee. The term of the lease expired in 1870 or 1871. A, C, and D, who were members of a Hindu joint family, afterwards came to a partition of their common estate, in which was included the 4 annas share, and one of them, D, sold his share in the 4 annas to B, who, on the 22nd December 1871, purchased it in the name of E. B then brought a suit to enforce his mortgage against F, the heir of his mortgagor, and on the 8th December 1873 obtained a decree, which on special appeal was confirmed by the High Court on the 21st December 1875. On the 6th December 1875, A, C, and E had brought a suit for the possession of the 4 annas share against one Mukund Kishore, who had wrongfully taken possession of the property in 1870 or 1871, soon after the expiration of the lease to B. The suit was finally decided in their favour on the 29th July 1879. In the meantime,—that is, somewhere in 1876,—B had contrived to take possession of the whole share. In 1883 symbolical possession was obtained under the decree of the 29th July. B then executed his mortgage decree, and attached the 4 annas share, excluding the portion which stood in the name of his benamidar. Z, the heir of A, having

LIMITATION ACT, 1877—continued

2 ADVDPSE POSSESSION—continued

his own right to it. It was contended for the plain

denied throughout. The case there is to be regarded as one against a trespasser and not as one between landlord and tenant. *Dinomoney Dubea v Doorgapersad Vozoomdar* 12 B L R 274 followed, and *Tekaitne Goura Kumari v Bengal Coal Company* 12 B L R 283 note distin

[I L R, 7 Bom, 98]

52 ————— *Anubhavam tenure—For-*

feiture by alienation—Landlord and tenant—
Lands in Malabar were demised on anubhavom tenure
Some of them were alienated by the tenant but the
landlord subsequently accepted rent More than
twelve years after the alienation the landlord sued

53 ————— Landlord and tenant—

Perpetual lease—Surrender of lease—The karnavan of a Malabar kovilagam executed a kuikanoim lease of certain land the jennu of the kovilagam in 1846 and in 1861 his successor demised the same land to the same tenants in perpetuity. The present karnavan sued in 1889 to recover possession of the land. **Held** that the perpetual lease as being of an improvident character was *ultra vires* and void that the original lease was not surrendered by reason of the acceptance of the subsequent lease that the suit was not barred by limitation the possession of the defendants never having been adverse to the plaintiff & s kovilagam

RAMUNNI v. KERALA VARMA VALIA RAJA

[L. L. R., 15 Mad., 188

'54 ————— Land in possession of

year 1295 which was held within twelve years before the date of suit. The subordinate Judge held that the suit was not barred by limitation. Held that

rent to the plaintiffs or to the defendants. If they had been paying rent to the defendants and not to the plaintiffs, possession must be held to have been with the defendants and a complete cause of action must be deemed to have arisen to the plaintiffs. On the other hand, if the plaintiffs had been in receipt of rent

LIMITATION ACT, 1877—continued.

2 ADVERSE POSSESSION—continued

from the tenants and if such receipt of rent extended to a period with in twelve years before the date of the institution of the suit the suit should not be held as barred by limitation. *Woomesh Chunder Goopto v. Raj Narain Roy*, 10 W R 15. *Krishna Gobinda Dhur v Hari Churan Dhur I L R 9 Calc 367*; *Sheo Sahye Roy v Luckmishur Singh I L R 10 Calc 577*, and *Sharat Sundari Debia v Balu Peshad Aar Chowdhury I L R 13 Calc 101*, distinguished. **GOESAIN MOHENDRA GIR v. RAJANI KANT DAS** 1 C W N. 246

55 ————— *Adverse possession*—

Landlord and tenant—The plaintiffs sued for possession of a third share in certain immoveable property alleging that they were entitled to it under an

his obseques. Accordingly one of the three donees, *B* lived with *Balaji*, and managed the property. *Balaji* died in 1852. *B* continued to manage the property till his own death in 1865 when *B*'s eldest son took up the management and he and the other heirs of *B* subsequently sold a portion of the property. The suit was principally against the sons and heirs of *B* and the purchaser. The plaint was filed on the 8th September 1873 and alleged (*inter alia*) that *B* managed the property as trustee. The defence substantially was that *B* held it exclusively as owner and not as trustee and that the suit was barred by limitation. Both the lower Courts dismissed the suit as barred by limitation holding that *B*'s possession was adverse and that *R* had no possession or enjoyment within twelve years previously to the institution of the suit. On appeal to the High Court—*Held* that *B*'s possession was

in the first instance in accordance with the contract, could not change the character of the possession by his mere will. He did not intimate to *R* or *S* that he repudiated the contract and intended to go into possession in opposition to any rights which they might assert. As he entered and continued to hold in a

express or implied between the parties in and out of possession to which the possession might be referred as legal and proper it could not be pronounced adverse. **DADORA v KRISHNA**

LLR. 7 Bom. 34

TATIA & SADASHIV I L.R. 7 Bom. 40

58 _____ Suit for partition

between co-owners—Possession of tenants—The plaintiff was the Zamorin of Calicut and he sued in 1887 for a moiety of certain property in Malabar

LIMITATION ACT, 1877—continued.

2. ADVERSE POSSESSION—continued.

main and substantial relief sought was the recovery of possession of immovable property from persons trespassing on it under the title of a fictitious mortgage, and the declaration of the invalidity of the defendants' pretensions was no more than an incidental step in the assertion of the plaintiffs' title and right to possession, the limitation of twelve years was applicable to the suit. *Tarangar Ali v. Kura Mal*, 1. L. R., 3 All., 391; *S. A. No. 432 of 1882, decided the 11th August 1882*; *Weekly Notes, All., 1882, p. 173*; *Sohra Pandey v. Sakotra Bibi*, 1. L. R., 5 All., 322; *Ramnarayan Pandey v. Raghubir Jati*, 1. L. R., 5 All., 490; *Uma Shankar v. Kulka Prasad*, 1. L. R., 6 All., 75; and the judgment of STRAIGHT, J., in *Hazra Lal v. Jadaun Singh*, 1. L. R., 5 All., 76, followed. *Ravani Prasad v. Bisheshwar Prasad*, 1. L. R., 3 All., 816; *Ashgar Ali v. Mahammad Zinulabdin*, 1. L. R., 5 All., 573, distinguished. *IKRAM SINGH v. INTIZAM ALI*

[1. L. R., 6 All., 280]

82. ——— and art. 44.—*Omission to sue within due time to set aside instrument affecting immovable property—Suit to recover property.*—Where a certain period is allowed by the Law of Limitation within which an instrument affecting a person's rights or immovable property must be impugned, and the person whose rights or property are affected fails to impugn such instrument within that period,—*Held* that he will not be precluded from availing himself of the longer period allowed for the recovery of immovable property, provided that he can prove that such instrument is null and void so far as his interests are concerned. *RAGHUBAR DEAL SARTU v. BHIKYA LAL MISSEER*

[1. L. R., 12 Cal., 69]

83. ——— *Agreement not to execute decree—Wrongful execution in breach of agreement—Deed of conditional sale—Disavowal of trust.*—The plaintiff sued in 1875 to recover possession of immovable property which the defendant had obtained in 1873, in execution of an *ex-parte* decree, dated the 8th June 1861. That decree was founded on a deed purporting to be a deed of conditional sale, dated the 24th December 1853, executed by the plaintiff in favour of the defendant. The plaintiff alleged that the deed was executed in order to protect the property against the claims of plaintiff's son, and the plaintiff sought to set it aside on account of defendant's breach of an agreement, dated the 16th January 1856, whereby the defendant stipulated that plaintiff's possession should not be disturbed. The defendant, *inter alia*, pleaded the bar of limitation against plaintiff's suit. *Held* that the suit was not barred by limitation, as plaintiff's cause of action only arose when defendant first practically disavowed the trust by seeking more than nominal execution of decree. *PARAM SINGH v. LALEJI MAL*

[1. L. R., 1 All., 403]

84. ——— *Suit for recovery of endowed property.*—In 1801 the shebait and proprietor of the gudi of a debsheba at K alienated part of the land by deed of gift to B for the purpose

LIMITATION ACT, 1877—continued.

2. ADVERSE POSSESSION—continued.

of founding a sheba at C, which was accordingly done. In 1823 the then shebait of the debsheba at K instituted a suit for the recovery of the alienated lands against the then shebait of the sheba at C, and in that suit it was declared that the sheba was independent of the debsheba, and the then plaintiff was referred to a regular suit. In 1861 the then shebait of the debsheba brought a suit for recovery of the lands against the then shebait of the sheba. *Held* that the suit, not having been instituted until after the lapse of more than twelve years from the plaintiff's succession to the sheba, was barred by the Statute of Limitations. *Seemle*—That the Statute of Limitations, Bengal Regulation III of 1793, barred the suit twelve years after the death of A. *KISSNOOND ASHROM DUNDY v. NURSINGH DASS BYRAGER* [Marsh., 485]

85. ——— *Religious endowment—Sale of trust property in execution—Suit by trustee to recover the property.*—In execution of decrees against the plaintiff, as the representative of his deceased father and brother, certain lands were sold to the first defendant. The plaintiff sued to recover them, alleging that the former owner of the lands had assigned them to his (the plaintiff's) brother and himself (the plaintiff) and their descendants by a deed of gift to perpetuate the worship of the donor's household idol. *Held* that the plaintiff was entitled to recover the property. The gift was a valid one creating a religious endowment under the Hindu law; and that the plaintiff's suit was not to set aside the sale, but was one by the trustee of the endowment to recover the property to which the limitation of twelve years was applicable. *RUPA JAGSHEE v. KRISHNAJI GOVIND*. . . 1. L. R., 9 Bom., 169

86. ——— *Suit by a trustee of a devasom disavowing the act of his predecessor.*—The trustee of a Malabar devasom, who had succeeded to his office in June 1883, sued in 1887 to recover for the devasom possession of land which had been demised on kanom by his predecessor in February 1881, on the ground that the demise was invalid as against the devasom. The defendant had been in possession of the land for more than twelve years, falsely asserting the title of kanomdar with the permission of the plaintiff's predecessor in office. *Held* the suit was not barred by limitation. *VEDAPURATTI v. VALLABHA* [1. L. R., 13 Mad., 402]

87. ——— *Suit by mirasidar to recover land resigned to Government by his ancestor—Cause of action.*—In a suit brought by a mirasidar to recover possession of miras land, which his ancestor had resigned to Government, against a holder to whom Government had subsequently granted it, it was held that the statute of limitations commenced to run against the mirasidar and his heirs from the time the miras was signed, and not from the date of the subsequent grant of it by Government. To the validity of the registration of miras land by a mirasidar to Government the consent of his heirs is not requisite. *ARJUNA VALAD BHIVA v. BRAVAN VALAD NIDIBAI*. . . 4 Bom., A. C., 133

LIMITATION ACT, 1877—continued

2 ADVERSE POSSESSION—continued

62 ———— *Suit to recover possession*

jaigam or presiding bhagayat priest of the math *Q*
died in 1874 and the present suit was brought in

on the security of the same land was obtained from
D, the son of *S* and the first mortgage deed was
then superseded by one executed in favour of *D*. In
1871 *D* assigned his mortgage to the defendant. It

63 ———— *Adverse possession—Benamidar*—In a suit against a purchaser at a sale
under Act XI of 1859 s. 13, the plaintiff claimed to
have an incumbrance by virtue of two mukurani

64 ———— *Adverse possession—Under-tenure granted under ghatwali tenure—A*

LIMITATION ACT, 1877—continued

2 ADVERSE POSSESSION—continued

assertion of right by either of the parties now in litigation as against one another. There being nothing else to render the possession adverse limitation only commenced at the date of the above mentioned claim to the compensation money which was made less than twelve years before the present suit was brought, and accordingly the suit was not barred. *RAM CHUNDER SINGH v. MADHO KUMARI*

[I L R, 12 Calc, 484; I L R, 12 I A, 168]
reversing on this point the decision of the High Court in *MADHO KOOERY v. RAM CHUNDER SINGH*

[I L R, 9 Calc, 411]

65 ———— *Possession by mortgagee*—Where plaintiff's ancestors mortgaged land and the mortgagee obtained possession on condition that the produce should extinguish interest—*Held* that the plaintiff's suit was not barred by the law of limitation.

BUDRI v. PATANATTIL KANJU MENAVAN

[2 Mad, 382]

mortgagee. On the death of *I* the defendants in this suit who were among his heirs caused their names to be recorded as his heirs as the proprietors of such estate to the exclusion of the plaintiff in this suit, who was his remaining heir; and they appropriated to their own use continuously for more than twelve years the profits of the unmortgaged moiety of such estate and the malikana paid by the mortgagee of the mortgaged property. In 1877 the defendants redeemed the mortgage of the mortgaged moiety of such estate from their own moneys. In 1878 the plaintiff sued for the possession of her share by inheritance of such estate. *Held* (*SPANKIE J.*, dissenting) with reference to the mortgaged moiety of such estate, that the possession of the defendants in respect of such moiety did not become adverse within the meaning of art 144 of sch II of Act XV of 1877 on the death of *I* in 1861 but on the redemption of such moiety in 1877—*adverse possession*.

MUHAMMAD YAB KHAN

I L R, 3 All, 24

67 ———— *Adverse possession*—On the 6th September 1865 *B* obtained a patni lease of certain land from the zamindar, and at an auction sale by the Sheriff of Calcutta on the 21st February 1867, the zamindar's interest was knocked down to *B* and a conveyance of the property to him was executed by the Sheriff on the 1st April 1867. On the 13th March 1879 a suit for khas possession was

LIMITATION ACT, 1877—*continued*.2. ADVERSE POSSESSION—*continued*.

the date of the mortgage, but from the date of the sale, and if, within twelve years from that date, the suit is in time. *IRADAT KHAN v. DABEE DYAL*

[I Agra, 180

97. ——— *Adverse possession*.—Obstruction to the obtaining possession by a mortgagee under his mortgage by persons who, while claiming a lien on the property, admitted the mortgagor's title to the property, held not to be adverse possession as against the mortgagee's title as purchaser. *PUN-MANANDHAS JIWANDAS v. JAMNABAI*

[I. L. R., 10 Bom., 49

98. ——— *Adverse possession*.—*Mortgagor and mortgagee*.—*Suit by mortgagee for possession of mortgaged property*.—*Pre-emption*.—*Purchaser for value without notice*.—Under a registered deed of mortgage, dated in May 1869, the mortgagee had a right to immediate possession; but by arrangement between the parties the mortgagors remained in possession, the right of the mortgagee to obtain possession as against them being, however, kept alive. In October 1869 the mortgagors sold the property, and thereupon one B brought a suit to enforce the right of pre-emption in respect of the sale and obtained a decree, and got the property and sold it in 1871 to D. In 1883, the mortgagee brought a suit against D to obtain possession under his mortgage. Held, with reference to a plea of adverse possession for more than twelve years set up by the defendant, that the position of a person who purchased property by asserting a right of pre-emption was not analogous to that of an auction-purchaser in execution of a decree, but that such person merely took the place of the original purchaser and entered into the same contract of sale with the vendor that the purchaser was making. There was privity between him and the vendor, and he came in under the vendor, and his holding must be taken to be in acknowledgment of all obligations created by his vendor. *Anundoo Moyee Dossee v. Dhonendro Chunder Mookerjee*, 14 Moore's I. A., 101; 8 B. L. R., 122, distinguished. *DUNGA PRASAD v. SHAMBIU NATH*

99. ——— *Limitation Act, 1871*, arts. 15 and 82.—*Suit by minor to set aside alienation of property by guardian*.—A Hindu family being heavily oppressed with debts, ancestral and otherwise, the two elder brothers of the family, for themselves and as guardian of their minor brother, under Act XL of 1858, applied to and obtained from the District Judge an order under s. 18 of the Act for the sale of several portions of the ancestral estate, and sold the same under registered deeds signed by the Judge. Within twelve years after the registration, the adopted son of the minor brother brought several suits against the purchasers to set aside the sales and recover back his share of the property, alleging that the two elder brothers had made the sale fraudulently and illegally to satisfy personal debts of their own. Held that a suit of this nature was not a suit to "set aside an order of a Civil Court" under art. 15, sch. II of Act IX of 1871; nor was it a suit "to

LIMITATION ACT, 1877—*continued*.2. ADVERSE POSSESSION—*continued*.

cancel or set aside an instrument not otherwise provided for" under art. 82, but that it was governed by art. 145. *SIKHER CHUND v. DULPATTY SINGH*

[I. L. R., 5 Calc., 363; 5 C. L. R., 374

100. ——— and art. 11.—*Suit for possession*.—*Civil Procedure Code (Act VIII of 1859)*, s. 246.—*Limitation Act (Act XV of 1877)*, sch. II, art. 11.—Where, in consequence of an adverse order passed under the provisions of Act VIII of 1859, s. 246, a suit is [since the Limitation Act (XV of 1877) came into force] instituted to establish the plaintiff's right to certain property and for possession, such suit is not governed by the provisions of art. 11, sch. II of Act XV of 1877, but by the general limitation of twelve years. *Koylash Chunder Paul Chowdhry v. Preonath Roy Chowdhry*, I. L. R., 4 Calc., 610; *Matonginy Dassee v. Chowdhry Junmunjoy Mullick*, 25 W. R., 513; *Joyram Loot v. Paniram Dhoob*, 8 C. L. R., 54; and *Raj Chunder Chatterjee v. Shama Churn Garai*, 10 C. L. R., 435, cited. *GOPAL CHUNDER MITTER v. MOHESH CHUNDER BORAL*

[I. L. R., 9 Calc., 230; 11 C. L. R., 363.

BISSESSUR BHUGT v. MURLI SAHU

[I. L. R., 9 Calc., 163; 11 C. L. R., 408.

101. ——— and art. 136.—*Suit to obtain possession of land from vendor who has been dispossessed and subsequently recovered possession*.—*Possession, Suit for*.—A vendor who was at the time out of possession of certain immovable property sold a share in it to a purchaser by a kobala. After the date of the sale, the vendor recovered possession, and the purchaser, within twelve years of the vendor's having so recovered possession, but more than twelve years after he had been originally dispossessed, instituted a suit to obtain possession of the share covered by the kobala. Held that the suit was governed by art. 144, and not art. 136 of sch. II of the Limitation Act (XV of 1877), and was not barred by limitation. Art. 136 does not apply to a suit brought against a vendor himself when he recovers possession. *RAM PROSAD JANNA v. LAKHI NARAIN PRADHAN*

[I. L. R., 12 Calc., 197

102. ——— and s. 28.—*Sale in execution of decree*.—*Suit to recover possession of property sold in execution*.—*Possession of a person having no title*.—K obtained a decree against G and in execution purchased G's property on the 9th August 1872. Plaintiff obtained a decree against K, and in execution purchased the property on the 21st August 1882. On plaintiff's going to take possession, defendant No. I obstructed him on the ground that he had purchased the property from K at a private sale, dated the 1st September 1876. The plaintiff thereupon, on the 6th September 1886, brought the present suit to recover possession of the property. Held that the title of defendant No. I to the land in dispute being not proved, art. 144 of the Limitation Act (XV of 1877) was applicable to the plaintiff's claim, and that the suit being brought within twelve years from the date of the purchase set up by defendant No. I (which was held

LIMITATION ACT, 1877—continued

2 ADVERSE POSSESSION—continued

88 ————— *Suit by mirasdar to re*

taken up by the defendant LAKSHUMAN RAMJI v
RAKHAL YALAD MAHIPATA 6 Bom, A C, 68

89 ————— *Adverse possession—Mokurari title—Onus probandi*—The plaintiff purchased a mouzah from the proprietor in 1869 and now sued to obtain possession from the defendant who was proved to have held under a ticea lease down to 1850 and who now claimed to hold under a mokurari lease which he said was granted by the former proprietor in 1859. The plaintiff failed to prove possession by his vendor within twelve years of suit brought and therefore the Courts below

sent back to the Court below to try the validity of that title DHANUK DHARI SINGH v GAFI SINGH
[6 B L R, Ap, 151 15 W R, 191]

See PRAHLAD SEN v RUN BAHADUR SINGH
[2 B L R, P C, 111 12 Moore's I A, 289
12 W R, P C, 6]

90 ————— *Suit to set aside mokurari grant—Notice of claim—Cause of action*—In a suit by the guardian of a minor to recover possession of certain lands in her zamindari and to set aside an alleged mokurari grant the plaintiff's case was that the defendants had held under a ticea lease and had wrongfully held on after its expiration. The defendants set up an old mokurari grant under which they claimed to hold in perpetuity upon the payment of a fixed rent. The High Court overruling the decision of the first Court upon the statute of limitations held and in the opinion of the Privy Council rightly that the statute does not begin to

COOMAREE v SAROO COOMAREE
[19 W R, P C, 252]

Affirming TEKAITNER GOURA COOMAREE v
BENGAL COAL COMPANY

[13 W R, 129 5 B L R, 667 note
12 B L R, 282 note]

91 ————— *Act IX of 1871, art 135*
—*Suit for possession after foreclosure proceedings*
—Under the Limitation Act of 1871 a mortgagee who has taken foreclosure proceedings may bring a suit for possession at any time within twelve years from the expiration of the year of grace. Art 135 sch II of that Act does not apply to such a case GHINABAIN DOBRY v RAM MONARUTH PAM DOBRY
[7 C L R, 580 1 L R, 6 Calc, 566 note]

LIMITATION ACT, 1877—continued

2 ADVERSE POSSESSION—continued

92 ————— *Suit by mortgagee for possession after foreclosure*—In a suit by a mortgagee to obtain possession after foreclosure instituted more than twelve years after such mortgagee had upon

GHINABAIN DOBRY v PAM MONARUTH RAM
DOBRY

[1 L R, 6 Calc, 566 note 7 C L R, 580]

93 ————— *Act IX of 1871, art 11*

expiration of the year of grace MODUR MOHDN
CHOWDHRY v ASHAD ALLY BEPAREE

[1 L R, 10 Calc, 68 13 C L R, 51]

See DEBOVAUTH GANGGOOLY v NURSINGH PRO-
SHAD DOS 14 B L R, 87 22 W R, 90

the property by the mortgagor ADJOODHYA SINGH
v GIRDHAREE 2 N W, 199

95 ————— *Suit for redemption*
—*against person not claiming under mortgagee*—
When the plaintiff brought the suit for redemption,

interests in land ANIMU v RAMAKRISHNA SASTRI
[1 L R, 2 Mad, 328]

96 ————— *Suit to set aside sale*
—*after conversion from mortgage into sale*—Where a mortgage is subsequently converted into a sale the cause of action in a suit to set it aside arises, not at

DIGEST OF CASES.

(5231)

LIMITATION ACT, 1877—continued.

2. ADVERSE POSSESSION—continued.

111.

Cause of action—Suit for possession and declaration of right to participate in permanent settlement of a mahal resumed under Reg. II of 1819.—Chur land was held by the proprietors of the adjoining estate. The chur was resumed by Government under Regulation II of 1819. The liable tenants of the adjoining permanently-settled proprietors of the chur was a contiguous settled estate, to which the chur was a contingent reservation, refused to make a permanent settlement with Government at the rent demanded. The chur was then held khas by Government for some time and subsequently leased out for temporary periods to strangers. In these temporary leases Government reserved the proprietor's rights to come in and take a permanent settlement on the expiry of ten years, and also reserved an allowance of ten per cent. on the rent as *malikana* on their account, which sum had been kept in deposit in the Collector's treasury. In 1867 Government made a permanent settlement with the defendant, one of the original proprietors of the contiguous estate, of the entire chur and refused the application of other shareholders to the estate to be joined in the settlement. The Collector, at the request of the defendant, applied the deposit in his treasury in satisfaction of the Government revenue. An unsuccessful shareholder brought a civil suit against the defendant for possession and declaration of his right to participate in the settlement. *Held* that the suit was not barred, as the period of limitation commenced from the date of the settlement with the defendant. *KUMHNA CHANDRA SANDYAL CHOWDREY v. HARISH CHANDRA CHOWDREY* 8 B. L. R., 524

S. C. KRISTO CHUNDER SANDYAL v. KASHEE KISHORE ROY CHOWDREY 17 W. R., 145
KRISTO CHUNDER SANDYAL CHOWDREY v. SHAMA SCONDEREE DEBIA CHOWDREY 22 W. R., 520

112.

and art. 113—Suit for possession of land based on compromise—Specific performance. A suit for recovery of possession of land, based on a compromise effected in the course of previous litigation between the parties, is not a suit for specific performance of contract, but a suit for "immovable property," and would be covered, not by s. 113 of the schedule to the Limitation Act, but by s. 145. In a suit for recovery of possession based on an agreement to surrender possession, the possession of defendants at the time when they made the agreement to deliver over the land to the plaintiff cannot be taken as hostile to the plaintiff, but can only be considered adverse to plaintiff from and after the date of the agreement by reason of defendant's refusal to carry out the promise. *BETTS v. MAHOMED ISMAEL CHOWDREY* 25 W. R., 521

113.

Transfer of immovable property—Specific performance of contract—Limitation Act, 1877. 113, 136.—On the 27th October 1865 the vendor of a certain immovable property executed a conveyance to the purchaser. On that date

LIMITATION ACT, 1877—continued.

2. ADVERSE POSSESSION—continued.

the vendor was not in possession of the property, although his title to it had been adjudged by a decree against which an appeal was pending. The conveyance did not contain any express promise or undertaking on the vendor's part to put the purchaser into possession. On the 24th February 1870 the vendor obtained possession of the larger portion of the property, and on the 23rd August 1872 of the remainder. On the 5th October 1877 the purchaser sued the vendor for the possession of the property, stating that "possession was agreed to be delivered on the receipt of action was that the vendor had not put them into possession. *Held* that the suit was not one for the specific performance of a contract to deliver possession, to which art. 113 of sch. II of Act XV of 1877 was applicable, but one to obtain possession in virtue of the right and title conveyed to the purchasers, to which either art. 136 or 144 of sch. II of that Act was applicable; and that, whichever of them was applicable, the suit was within time. *SHEO PRASAD v. UDAI SINGH* I. L. R., 2 All., 718

114.

Suit to declare will invalid—Reversioner.—Suit by A, a Hindu lady and daughter of B, to declare invalid a will of B, made in favour of C, a relative. It appeared that D, the widow of B, instituted proceedings against C, the devisee of B, which she claimed the property of B. Subsequently the widow, by a deed of compromise, admitted rights of C and abandoned her own. *Held* (SHEO-KARR, J.) that limitation in the present suit against C, the devisee, ran from the date on which the widow admitted the devisee's rights, and from any prior date, as during the period of the widow's dispute with the devisee she was protected the interests of C, who claimed to be the reversioner who would not have been heard in the matter who would not have been heard in the matter of limitation. *SORDAMINEE DOSSEE v. BISTOO NARAYAN* [8 W. I.]

115.

Stranger claiming interest in estate together with an undivided inheritance among such owners.—In a three undivided brothers an estate was partitioned, the eldest as manager, on whose application a sister's husband was recorded in the partition as a co-proprietor with them. Even if he by joining in the purchase was entitled to an undivided fourth share in the family; and the members of the family did not thereby become a member of the family; and the members of the family right to succeed to his fourth share descend to his own heirs, the other which he would not have inherited a survivorship among the members of the family of the eldest brother obtained by the father and uncles sole possession of the estate. *Held* that he did not take the share above-mentioned by any right, and that, in the absence of proof that it was by authority of the fourth proprietor, his possession must be taken as adverse to the latter and to

LIMITATION ACT, 1877—continued.**2 ADVERSE POSSESSION—continued.**

by the lower Courts not proved), the claim was not barred. Want of possession for twelve years after the date of purchase would extinguish the purchase.

103. — *Suit by auction-purchaser to set aside alienation by judgment debtor*—An auction-purchaser can sue to set aside any alienation made by the judgment-debtor previously to the sale in execution which he thinks to be collusive. **BARCHOO : HOWARD** [3 Agra, 15]

The cause of action in such a suit runs from the date of transfer, and the suit is barred after the expiration of twelve years, unless the transfer was actually fraudulent. **NARAIN DASS : NIDHIA LALL** [3 Agra, 19]

104. — *Purchaser at sale for arrears of revenue—Shikmi talukh*—A purchased a zamindari of which certain mouzaha were claimed and taken possession of by B and C as mokurari holders of a shikmi talukh created by the former zamindar before the Decennial Settlement. To a suit by A for the recovery of the lands, B and C pleaded limitation, calculating the period from the time of the purchase in 1833. *Held* that limitation must be computed not from the time of the purchase, but from the time when possession was taken from the purchaser. **WISE : BROOBN MOYE DEBIA**

[3 W. R., P. C., 5 : 10 Moore's I. A., 185]

105. — *Suit by purchaser to compel zamindar to register transfer*—Where a zamindar refuses to register a transfer on the application of a purchaser, the latter's cause of action in a suit to compel him to do so arises from the time of such refusal, and not from the time when his title accrued by his purchase. **RADHICA PERSHAD SHAHDOO v. GOOROO PRASUNO ROY** [20 W. R., 125]

106. — *Rights of—Limitation—*

veyance or assignment, and, their cause of action

LIMITATION ACT, 1877—continued.**2 ADVERSE POSSESSION—continued**

arising in 1842, they were barred by limitation. **ENAYET HOSSEIN v. GREJDHARI LALL**

[2 B. L. R., P. C., 75 : 11 W. R., P. C., 29
12 Moore's I. A., 366]

107. — *Suit to recover land sold in execution of decree—Possession*—The purchaser at a sale held on the 14th September 1881 in execution of a decree in the form of a money-decree, obtained upon a mortgage-bond executed by the

possession in November 1866. In July 1878 the

MUNBASI KOER : NOWRUTTOY KOER

[8 C. L. R., 423]

108. — *Settlement by revenue authorities*—Where the defendants, who were at the settlement in 1841, when the estate was farmed out recorded as proprietors by the revenue authorities, did not hold proprietary and adverse possession till the expiry of the farming lease,—*Held* that the plaintiff's suit was not barred by limitation as not having been brought within twelve years after 1841. **RAMAISHAR SINGH : SATYA ZALIM SINGH**

[2 Agra, 8]

109. — *Settlement by revenue authorities—Co-sharer*—In a case in which, after resumption, one of several shareholders, for himself and the others, took a settlement from Government, the right of any other shareholder to the property

110. —

possession of the whole lands were held

[3 C. L. R., 453]

LIMITATION ACT, 1877—continued.

2. ADVERSE POSSESSION—continued.

more than twelve years before the plaintiff's adoption.
KESAVAJI JAMNATHAN v. MURTHAI

[I. L. R., 13 Bom., 278]

120. ———— *Mortgagee becoming purchaser of share in mortgaged property.*—A part of an entire undivided estate does not, by a subsequent purchase of a certain share therein from one of the actual possessors at the time of conveyance, thereby change its character from a mortgage to that of an owner, but his possession continues as a mortgagee. *Held* an entire undivided estate under a mortgage (hypothecary) from C since 1273 (1803), and a share mortgaged in 1282 (1875) *H* purchased a share therein from *D*, who had not been in actual possession since the date of the mortgage. On the 25th January 1885, *H* brought a suit to recover possession of his purchased share. *Held* that the subsequent purchase did not change the character of *H* from that of a mortgagee to that of an owner, and that his suit was barred by twelve years' limitation. **NEHAJI LAL AGRA v. JODI NATH HALDER**

[I. L. R., 14 Cal., 674]

121. ———— *Co-sharer's adverse possession of one co-sharer's share.*—*Mortgage—Mortgage by three co-sharers—Redemption by one of several mortgagors—Right of the other mortgagors to sue for redemption—Period of limitation for such suit.*—In 1847 the property in dispute was mortgaged by three co-sharers, *B*, *A*, and *R*. In 1879 *B* alone redeemed the property and mortgaged it again to a third person. In 1882 the heirs of *D* and *A* brought a suit to redeem the whole of the property, or their portions of it. The defence to the suit was that it was barred by limitation, being brought more than twelve years after *B* had redeemed the property, and *R*'s possession subsequently to such redemption having been adverse to the plaintiffs and their predecessors in title. *Held* that the suit was not barred by limitation. When *B* redeemed the property, he held it, as regards his co-sharers' interests in it, as alienor, and as such his possession was not adverse to them. It did not contradict, but rather implied and preserved, their ultimate proprietary right. In the case of a co-sharer holding after redemption, limitation is computed only from the date when the possession becomes adverse by the assertion of an exclusive title and submission to the right thus set up, in analogy to the provision which bars an excluded sharer generally after the lapse of twelve years from the time when he becomes aware of his exclusion. As long as possession can be referred to a right consistent with the subsistence of an ownership in being at its commencement, so long must the possession be referred to that right rather than to a right which contradicts the ownership. **RAMCHANDRA YASHVANT SIPPOTDAR v. SADASHIV ABAJI SIPPOTDAR**

[I. L. R., 11 Bom., 422]

122. ———— *Suit for redemption or recovery of property on payment of a charge.*—*Possession after a redemption by one of several mortgagors.*—The plaintiff sought to recover his father's share in two portions of family property,

LIMITATION ACT, 1877—continued.

2. ADVERSE POSSESSION—continued.

one of which had been mortgaged by the plaintiff's father and the father of the defendant No. 1 jointly; the other had been mortgaged by the plaintiff's father jointly with the father of defendant No. 1 and the husband of defendant No. 2. The first was redeemed by the father of defendant No. 1 alone in 1868; the second was redeemed by the defendant No. 1 more than twelve years before the suit. The parties were Mahomedans, and the plaintiff had a brother and three sisters, only one of whom (defendant No. 2) was a party to the suit. Defendant No. 1 contended that the suit was defective for want of parties, and that it was time-barred. *Held* that the plaintiff's brother and sisters ought to have been joined as co-plaintiffs, the defendant No. 1's possession after redemption not being adverse to them. If it was adverse at all, it was adverse to the whole of the plaintiff's branch of the family, so as to bar the right of the group altogether. But that was no reason why the co-owners should not be admitted as co-plaintiffs, and the suit must go on upon its merits. **IBRAHIM v. ISMAIL**

[I. L. R., 11 Bom., 425]

123. ———— *Redemption of land by one of two co-mortgagors and re-mortgage thereof.*—*Possession under second mortgage for more than twelve years.*—*A* and *B*, two brothers, being entitled to certain land, mortgaged it in 1852 to *C*. In 1864 *A* redeemed the mortgage and re-mortgaged the land to *D* for the same amount. In 1885 the defendants (sons of *A*) redeemed the mortgage to *D*. In 1886 the plaintiff (son of *B*) sued defendants and the representatives of *C* and *D* to redeem a moiety of the land on payment of a moiety of the amount due on the mortgage of 1852. The defendants pleaded, *inter alia*, that the suit was barred by limitation, as the land had been held adversely since the mortgage of 1864. *Held* that, in the absence of proof that the land was held with an assertion of adverse title, the plaintiff was entitled to a decree. **MOMIN v. OOTHUMANGANNI**

[I. L. R., 11 Mad., 416]

124. ———— *Mortgage—Conditional sale—Foreclosure—Suit for possession—Reg. AT II of 1806, s. 5—Cause of action—Limitation Act (XIV of 1859), s. 1 (12).*—A suit for foreclosure was brought in 1886 upon a mortgage by conditional sale executed in 1846, the condition being for payment within five years from that date. The deed provided that, in default of payment within the prescribed period, the property mortgaged "will be foreclosed (baibat), and this mortgage-deed will be considered as an absolute sale-deed." Between 1846 and 1886 no foreclosure proceeding or other steps were taken by the mortgagee, and no admission of liability was made by the mortgagor. *Held* that by reason of Act XIV of 1859 (Limitation Act) the plaintiff's remedy was barred during the currency of that Act, and that the time within which he was entitled to maintain an action for foreclosure, if he had taken the proper proceedings, expired in 1863. *Held* also that, even under Regulation XVII of 1806, the cause of action was the original non-payment of the money on the due date, and the provisions of the regulations could not create a

LIMITATION ACT, 1877—continued.

2 ADVERSE POSSESSION—continued

through him. It followed that a suit to obtain from those claiming through the son, who was now dead, the one fourth share brought more than twelve years after possession taken by the son, by a purchaser, relying on a title through the fourth co-proprietor was barred by limitation under art 144 of the second schedule of Act XV of 1877. **RAMAKISHANMA v RAMANNA** I L R, 9 Mad., 482

COLLECTOR OF GODAVERY v ADDANKI RAMANNA
PANTULU I L R, 13 I A, 147

116 ——— *Benamidars—Purchaser at sale for arrears of revenue*—In a suit against a purchaser at a sale under Act VI of 189 s 13 the plaintiff claimed to have an incumbrance by virtue of two mukurari pottahs executed by the heirs of the last of a series of benamidars and the question was whether those who had granted the mukurari were entitled to all, or to any and what part of the fund comprised in their grant and as to this the most important fact was the actual possession or receipt of the rents it being found that the last benamidar had actual ownership of one fourth of the property comprised therein. *Held* that the incumbrance was good to the extent of such one-fourth share and the twelve years' bar commencing from the date of possession first held adversely the suit was not barred by art 144 Act XV of 1877. **IMAMFANOI BEGUM v KAMLESWARI PERSHAD** I L R, 14 Cal., 103
I L R, 13 I A, 160

117. ——— *Cause of action—Acts IX of 1871 and XV of 1877*—*R* a Hindu widow granted a jungleburi tenure to certain tenants in respect of a chur belonging to her husband's estate. An amulnama was granted to the tenants signed by a karpardaz of *R* in respect of the tenure. *R* died in January 1861 and was succeeded by *J* and *P* two daughters the last of whom died on the 31st December 1880. On her death the grandsons succeeded to the estate. On *R*'s death, *J* and *P* got possession of all estate papers and amongst them a dowl granted by the tenants in return for the amulnama. In 1865 proceedings were taken by the tenants to obtain kabulats on the footing of those documents which proceedings came to an end in 1868. In 1873 *J* and *P* instituted suits against the tenants alleging the amulnama and dowl to be forgeries and seeking to enhance the rents payable to them as well as to have it declared that *R*'s acts did not bind them. In these suits it was found that *J* by and was years from *R*'s death to raise the question. In 1884 *D*, a receiver instituted a suit in the names of the grandsons to eject the tenants on amongst other grounds that the grandsons reversioners were not bound by *R*'s acts and that the jungleburi tenure was not binding on them that the tenants were middlemen and had no right of occupancy, that at all events the plaintiffs were entitled to rent on the area

LIMITATION ACT, 1877—continued

2 ADVERSE POSSESSION—continued

of land then held by the defendants, as there had been large accretions to the amount covered by the amulnama and dowl. The defendants amongst other things pleaded limitation. *Held* that the suit was barred by limitation. Adverse possession began to run on *R*'s death (as *J* and *P*, who represented the estate, were then well aware that the tenants claimed to hold the lands under a permanent lease and though *J* and *P* received rent the possession of the tenants was adverse to them), and more than twelve years elapsed before Act IX of 1871 came into force and therefore the defendants had then obtained a good title by adverse possession as against all the reversioners which could not be defeated by the provisions of the subsequent Limitation Acts of 1871 and 1877. **DROBOMOYI GUPTA v DAVIS**
[I L R, 14 Cal., 323]

118 ——— *Limitation Act 1877, art 141—Adverse possession against widow—Reversioners*—The plaintiffs sued for possession of certain

ing himself to be the adopted son of *C* and being in possession of the property in dispute since the death contended that the claim was barred. The Court of first instance dismissed the claim as barred by art 118 of the Limitation Act and on appeal the District Judge held that the claim was barred by defendants adverse possession over the property for more than twelve years. On second appeal it was contended that the suit being by a Hindu entitled to possession as a reversioner on the

[I L R, 10 All., 465]

119 ——— *Hindu widow—Adopted son—Adverse possession against widow for more than twelve years—Effect of as against a subsequently adopted son—Title—Adverse possession*

dant from the management and enjoyment of the property in question. In 1883 the plaintiff sued as the adopted son of *S* to recover possession of the property in dispute. *Held* that the suit was barred the defendant having held adversely to the widow for

LIMITATION ACT, 1877—*continued*.2. ADVERSE POSSESSION—*continued*.

declaration that the defendants were no longer entitled to the allowance under the deed, and for an injunction restraining the defendants from the execution of the deed against the yatan. The defendants contended (inter alia) that the deed could not be cancelled, Y having granted it as full owner; and that the receipt by the defendants of the allowance had been adverse since 1811, when their services had ceased. It is the lower Courts decided in favour of the plaintiffs. On appeal by the defendants to the High Court. *Held*, reversing the decree of the lower Courts, that the plaintiffs were entitled to the declaratory decree and to the injunction prayed for. Although the management of the yatan was vested by the deed in the defendants and their heirs in perpetuity under the title of *gomashtas*, nevertheless the remuneration attached to the office by Y was a derogation of his successor's rights, and was therefore, at any rate in the absence of proof of custom, invalid as to them. *Held* also that, assuming the grant by Y to be invalid as against his successors, adverse possession would only run against the plaintiffs from the time of his death in 1871, and the present suit, having been filed within twelve years from that date, was not barred. KRISHNAJI v. VITHALRAO. I. L. R., 12 Bom., 60

130.

Suit against Government

for inam lands and mokasa annals—Attachment under Act XI of 1852, Effect of—Adverse possession—Mokasa annals, Meaning of.—In 1826 A obtained a decree on a mortgage, awarding him possession and enjoyment of certain inam property, consisting of lands and of cash allowances annually paid from the Government treasury called mokasa annals. A and his successors continued in possession down to 1852, when the inam was attached on behalf of Government pending an inquiry, under B. Malay Act XI of 1852, into the title of the holders of the inam. The attachment remained in force till 1865, when Government finally decided that the inam property, with the exception of a certain portion, should be restored to those from whose possession it had been taken in 1852. Thereupon D, the successor in interest of A, applied to the Collector to be restored to possession. The Collector refused. D therefore sued him for arrears of the mokasa annals and obtained a decree in 1868. Thereafter D did not receive any payment from the Government treasury. In 1883 D filed the present suit against Government to recover possession of the inam lands together with arrears of the annals. *Held* also that, even if the suit were cognizable by the Civil Courts, it would be barred by limitation. The plaintiff's right to the periodical payments was barred by a total discontinuance of them for more than twelve years before the institution of the suit, notwithstanding his decree for the annals in 1868, which might establish his right to them in that particular year. *Held* further that the claim to the lands was also time-barred, the Collector's possession being that of an adverse holder since 1865, when the attachment was ordered to be withdrawn. The land could not properly be said to be in *custodia legis*, Government having taken possession of it in its own

LIMITATION ACT, 1877—*continued*.2. ADVERSE POSSESSION—*continued*.

right, and not on behalf of any rival claimants thereto. Rao Karan Singh v. Baker Ali Khan, L. R., 9 J. A., 99; I. L. R., 5 All., 1; Shidhohirav v. Naikgajjar, 10 Bom., 228; and Tukaram v. Sujan Gir Guru, I. L. R., 8 Bom., 555, distinguished. SHYRAM DISKAR (GHARHURAY) v. SECRETARY OF STATE FOR INDIA. I. L. R., 11 Bom., 222

131.

Suit for declaration of title.—In a suit the parties to which were Nambudri Brahmins following the Marumakkattayam law; the plaintiff sued as the adoptive son of the last member of an otherwise extinct mana for a declaration of his title to certain lands as the sole urulan of a devasam. He was in possession of the greater part of the land, but one piramba was alleged to be held adversely to him by a person not joined in the suit, and the tenants of part of the remaining land had adhered to the defendant. In 1875 a suit was brought by the defendant's brother and others against the plaintiff and others to set aside an alienation by the present plaintiff's predecessor in title, but the suit was dismissed without any decision as to the co-urami right of the then plaintiff; and the present plaintiff had no further notice of interference by the present defendant's mana. *Held* that the claim was not barred, and that the plaintiff was entitled to the decree sued for. SUBRAMANYAN v. PARAMASWARAN [I. L. R., 11 Mad., 116

132.

Manager of a Hindu temple—Shervaks or servants of an idol—Rights of manager and servants inter se.—The plaintiff was the hereditary manager of the temple of Shri Ranchoh Raiji at Dakor. The defendants were the shervaks or ministers of the deity. The plaintiff sued to oust the defendants from a certain piece of land attached to the temple, alleging that the defendants had erected shops on the land, and appropriated the rents to their own use, although it had been already decided in a suit between the parties that the land was always to be kept open and unoccupied for the use of the temple. The shervaks contended that they had been in exclusive and uninterrupted possession of the land in dispute for more than twelve years, and that by reason of such user they had acquired a quasi-proprietary title at least as against the manager of the temple. They therefore pleaded that the suit was barred by limitation. *Held* that the defendants had not by occupation and user acquired any title as against the plaintiff, who was the manager of the temple estate. They had come into occupation originally as servants and representatives of the deity, and during their occupation they could not by a wish change the nature of their possession. Both they and the plaintiff held the land for the same deity, and their rights could not be adverse to each other so as to give rise to a title by prescription. The only question then was as to which of them was the proper representative of the deity for the particular purpose of this suit, and that question had already been decided in a former suit in favour of the plaintiff. MULJI BHULABHAI v. MANOHAR GANESH [I. L. R., 12 Bom., 322

LIMITATION ACT, 1877—continued**2 ADVERSE POSSESSION—continued**

fresh cause of act on *Denonath Gangooly v Nursing Proshad Doss* 14 B L R 87 referred to MURAI DHAR & KANCHAN SINGH

[I L R, 11 All, 144]

125 ———— *Hindu law—Joint family—Purchaser from one co partner*—Plaintiffs being members of a joint Hindu family alleging division and a sale to them by other members of their share in the family property more than twelve years before suit sued to eject a more recent purchaser. The

MUTTUSAMI & RAMAKRISHNA

[I L R, 12 Mad, 292]

126 ———— *Partit on—Alienation*

which originally belonged to the family. As to whom the ordinary rule of limitation (art 141) applies BHAVRAO & RAHEMIN I L R, 23 Bom, 137

127 ———— and art. 141—*Exclusive possession by one of the co sharers of portions of joint property the rest being held jointly*—Plaintiff and defendant No 2 (two sisters) inherited jointly to their father's estate twenty five or thirty

there in the character of a guest. There was no evidence that plaintiff asserted her title to the

Ali Khan v Albar Ali Khan 1 C L R, 361 followed BARODA SUNDARI DEBY & ANNOA SUNDARI DEBY . . . 3 C W N, 774

LIMITATION ACT, 1877—continued**2 ADVERSE POSSESSION—continued**

128 ———— *Limitation Act 1877, s 10—Trust—Spiritual slavery of disciple to guru—Act V of 1843*—This was a suit brought in 1881 by the head of an adhinam for declarations that a muth was subject to his control that he was entitled to appoint a manager that the present head of the muth was not duly appointed, and his nomination by his predecessor was invalid and for delivery of

was founded by a member of the adhinam. Many previous heads of the muth had agreed to be slaves of the head of the adhinam but for over sixty years the head of the adhinam had exercised no management over the endowments belonging to the muth and in a suit (compromised) of the year 1804 the present pretensions of the head of the adhinam had been denied *in toto*. The defendant had succeeded in 1890 to the management of the muth under the will of his predecessor dated the same year and was not a disciple of the adhinam. Held that the suit was barred by limitation in respect of the personal claim to manage the endowments as to which no claim had been put forward for sixty years that the suit was not barred by limitation in respect of the claim to set

agreement of the head of the muth to become the slave of his guru could have no legal operation since 1813 and that the adverse possession of the defendant from that year was fatal to any claim of the plaintiff under such agree ment GITANA SAM BAYDHA PANDARA SANNADHI & KANDASAMI TAM BIRAM I L R, 10 Mad, 375

129 ———— *Grant of profits of deshmukhi vatan in perpetuity—Hereditary gomastas—How far such grant aided after the*

granted by way of remuneration for their services Rs201 and a quantity of grain out of the annual vatan income in perpetuity. In consideration of certain sums obtained from the defendants I mortgaged the vatan property to the defendants who subsequently sued upon the mortgage. That suit was referred to arbitration and an award was duly made and a decree upon the award was obtained by the defendants against Y. In 1859 execution of the decree was granted against Y. In 1864 the services connected with the vatan were discontinued by Government. In 1871 Y died. The defendants having kept the decree alive sought in 1881 to execute the decree against the plaintiffs' eldest brother, who filed objections but his objections were overruled and execution was ordered to issue. The plaintiffs brought this suit in 1893 for a

LIMITATION ACT, 1877—continued.

2. ADVERSE POSSESSION—continued.

were comprised in the mortgage, together with defendant No. 1 the one described as his disciple, it was admitted that the first mortgagor had occupied the position of a servant up to 1871, and that in that year he had executed an instrument authorizing defendant No. 2 to take possession of the properties on behalf of defendant No. 3, whom, as was recited, the executant had taken in adoption and appointed to be his successor. In 1871 the first mortgagor purported to cancel the instrument above referred to, but it appeared that he never actually resumed the management, and that defendant No. 2 resisted various attempts then and subsequently made to interfere with his possession, and held the properties together with defendant No. 3 up to the date of the suit. *Held* that defendants Nos. 2 and 3 were in adverse possession of the mortgage premises from 1871, and that the mortgage was consequently invalid, whatever the purpose of the debt intended to be secured thereby. **SUBRAMAYYAN v. SUBRAMANIAM SAHUN**

[I. L. R., 18 Mad., 342]

138.

Patnidar and dar-patnidar. Disposition of. Adverse possession—Relinquishment by the patnidar. Effect of.—The land in dispute along with other lands were let out in ptni and dar-ptni by the predecessor in interest of the plaintiffs. During the continuance of the said leases the land in dispute was taken possession of, and held adversely by, the defendants or their predecessor. The ptni and dar-ptni were relinquished by the patnidar and dar-patnidar in favour of the plaintiffs on the 29th June 1891, and they, on the 28th June 1893, brought a suit for recovery of possession of the disputed land from the defendants. The defence was that the suit was barred by limitation. *Held* that art. 144, sch. II of the Limitation Act, applied to the case, and that the suit was barred by limitation, inasmuch as it was not brought within twelve years from the date when the possession of the defendants became adverse to the plaintiffs. **Nuffer Chandra Pal Chordhry v. Rajendra Lal Goswami, I. L. R., 25 Calc., 167; Gunga Kumar Mitter v. Asutosh Goswami, I. L. R., 23 Calc., 563; Sharat Sundari Dabia v. Bhobo Pershad Khan Choudhury, I. L. R., 13 Calc., 101; and Chinfo v. Janki, I. L. R., 15 Bom., 51, distinguished. GOMINDA NATH SHAHA CHOWDHURY v. SURJA KANTA LAHRI**

[I. L. R., 26 Calc., 460]

139. ——— *Mortgage dating from before the annexation of Oude—Oude Redemption Act XIII of 1866—Under-proprietary rights of third parties in adverse possession, with a sub-settlement of one of the villages mortgaged.*—In 1854, before annexation (1856), the owner of a talukh of ten villages made a usufructuary mortgage of the entire ilaka to a neighbouring talukhdar. The mortgagor died in 1857, leaving a minor son, to whom, during the events that followed, the mortgage was unknown, and whose attempts to establish an inherited right to the mortgaged ilaka against the talukhdar were ineffectual whilst that ignorance lasted. The confiscation of 1858 had at one time swept away all rights, whether of the talukhdar, who was mortgagee,

LIMITATION ACT, 1877—continued.

2. ADVERSE POSSESSION—continued.

or of the mortgagor's heir, to redeem, or of any under-proprietors on the ilaka. This effect was thus counteracted. In the settlement of 1859-60, adjustments were made of the ownership of property, and in this case settlement was made with the talukhdar of his larger talukhdari estate, in which the mortgaged ilaka was at the same time incorrectly included as part. The right of redemption was restored by Act XIII of 1866, the mortgagor's heir being, however, unaware of his title to redeem any mortgage. Under-proprietary rights were restored by order of Government in 1873. Such rights were, with a sub-settlement, decreed by a Settlement Court on the 31st July 1866, in one of the villages of the mortgaged ilaka, in favour of a claimant, through whom the defendants in this suit now made title. In 1881, the mortgagor's heir, having by that time discovered the existence of the mortgage of 1854, sued the heir of the mortgagee to enforce the right to redeem. He obtained against the talukhdar as such heir a decree for possession of nine of the villages in the ilaka, **Arvanat Bibi v. Imdad Husain, I. L. R., 15 Calc., 809; I. L. R., 15 I. A., 106**, but the tenth was in the hands of the under-proprietors above mentioned, whom he sued for possession of it in 1887. *Held* that, inasmuch as the defendants were by the decree of 1866 established as owners of an under-proprietary right, becoming thereby entitled to a sub-settlement which they had obtained, their possession was adverse to any one claiming to be talukhdar or superior proprietor of the same estate, as well as to others. The defendant's possession with title dating from 1866 at latest, the lapse of time barred this suit under Act XV. of 1877. **IMDAD HUSAIN v. AZIZ-UN-NESSA**

[I. L. R., 23 Calc., 483]

I. L. R., 23 I. A., 8

140. ——— *Right of possession claimed by tenant against landlord—Mortgage by landlord—Possessory suit in the Mamlatdar's Court by the tenant against the mortgagor—Decree in favour of the tenant—Assignment of mortgage by mortgagee—Suit brought by the assignee to recover possession—Effect of Mamlatdar's order against mortgagor.*—One R, who was the owner of the land in dispute, mortgaged it to B in July 1870. In October 1876 the defendant, a tenant of the land, obtained an injunction against R restraining him from interfering with his (the defendant's) possession, in possessory suit which was filed in the Mamlatdar's Court in May 1876. In July 1877 B obtained a decree on his mortgage, and in execution he got possession of the property from R (the mortgagor) in June 1879. The plaintiff, who was the assignee of both B and R (mortgagee and mortgagor), sued the defendant in ejectment in September 1888. Both the lower Courts allowed the claim. On second appeal, —*Held* that ever since the proceedings in the Mamlatdar's Court commencing with the defendant's suit in May 1876, the possession of the defendant, whatever may have been its nature originally, was distinctly adverse to R, and also to the plaintiff, who as assignee might have taken possession at any time under the

LIMITATION ACT, 1877—*cont nued*2 ADVERSE POSSESSION—*continued*

133 ————— *Adverse possession of defendant supplemented by previous adverse possession of widow by whom defendant was adopted—Limitation Act (XV of 1877) s 3*—*B* died in 1865 without a son leaving three widows viz *L*, *A* and *C* of whom *L* was the eldest and *C* the youngest. The plaintiff was unanimously selected by the three

adopted the defendant *C* the 10th August 1881 the plaintiff filed this suit against the defendant alleging himself to be *B*'s adopted son and as such claiming possession of *B*'s property. He did

having been carried out without the consent of *L* the senior widow. He further contended that the plaintiff's claim to the property was barred by limitation it having been in possession of himself (the defendant) and *L* for more than twelve years before this suit was filed. *Held* that the suit was barred by limitation (art 144 of the Limitation Act XV of 1877) the defendant having been in adverse possession of the property for more than twelve

from *L* and *C* the 10th August 1881 the plaintiff became barred in 1878. *PADAJIRAO v RAMRAY*

[I L R., 18 Bom., 160]

134 ————— *Mortgage—Mortgagee in*

LIMITATION ACT, 1877—*continued*2 ADVERSE POSSESSION—*continued*

from possession by *B* a trespasser (defendant)

barred by limitation. The plaintiff contended that *B*'s possession was not adverse to him because he as mortgagor had no right to possession during the term of the mortgage. *Held* that the suit fell under art 144 of sch II of the Limitation Act (XV of 1877) and that it lay upon *B* to prove that his possession for twelve years prior to the suit was adverse to the plaintiff (the mortgagor). There may be a possession adverse to the interest of a

question of when *B*'s possession became adverse to the plaintiff. *CHINTO v JANAKI*

[I L R., 18 Bom., 51]

135 ————— *Alienation of a Hindu's property by his mother and guardian—Suit filed in 1891 to recover possession of certain land the property of a Hindu who died an infant leaving him surviving his adoptive mother who entered into possession and enjoyed the property till her death in 1890. It appeared that in 1861 the deceased and his adoptive mother had conveyed absolutely certain of the properties to the widow of one of his first cousins on his adoptive father's side for her maintenance and that of her daughter and that it had been assigned by her to *A*, *B* and *C*. *Held* that the plaintiff's claim to the lands in the possession of *A*, *B*, and *C* was barred by limitation. *SUNDRAMMAL v PANGASAMI MUDALIAR**

[I L R., 18 Mad., 193]

136 ————— *Non payment of melvaram—Claim of kudiaram right by prescription—In a suit to recover land of which neither the plaintiff nor his predecessor in title had been in possession within a period of forty years before the suit the defendants pleaded that the plaintiff had been entitled to receive melvaram only that the payment of melvaram had been discontinued fifteen years before the date of the suit and that they themselves were entitled to the kudiaram right in the land. It was found that the non payment of the melvaram had not been accompanied by an assertion of adverse title and that the defendant's kudiaram right had not been set up twelve years before the suit. *Held* that the suit was not barred by limitation. *GOVINDA PILLAI v RAMANUJA PILLAI**

[I L R., 18 Mad., 171]

137 ————— *Mortgage by previous owner out of possession for twelve years—Alienation of endowed property—In a suit on a mortgage, dated the 19th June 1888 and executed by the superintendent of a mosque the endowments of which*

LIMITATION ACT, 1877—continued.**2. ADVERSE POSSESSION—continued.**

her, held, adversely to the heirs, by the widow of another co-parcener.—The plaintiffs were in the line of the heirs of an ancestor from whom, through his daughter, their grandmother, they were descendants in the third generation. In 1888 they sued the defendants, who were in possession, to recover what had been part of the family estate, alleging title according to the Mitakshara. A question whether the plaintiffs were not barred by limitation depended on whether the now disputed part of the family property had not been from the year 1843 in the adverse possession of the widow of one of their great uncles. This widow, after transferring that part of the property to a person through whom the defendants made title, died in 1886. She was the widow of the elder of two brothers, the last co-parceners of the family, who, being sons of the said ancestor, had at one time held the family estate. This elder brother, her husband, died in 1826. His younger brother survived him, and, having taken the whole estate by survivorship, died in 1833, leaving a widow, who died in 1843. The latter widow, having inherited the estate from her husband for her life-estate, there being no co-parcener left, gave a share of her inheritance to the above-mentioned widow of the elder brother. So assigned, the property remained, with the addition in 1843 of the share which the younger brother's widow had kept for herself, in the possession of the other widow, the one first abovementioned. After many years, this widow transferred it to her own brother, of whom the present defendants were the heirs and representatives. It was decided below that it had not been in the right of a Hindu widow taking by inheritance from her husband that the elder brother's widow had obtained, and had dealt with, the property. A widow's estate for life never constituted a possession adverse to the reversionary heir, but here the widow, through whom the defendants claimed, had been from 1843 in adverse possession for more than twelve years. The suit was therefore barred under the Limitation Act (XV of 1877). This judgment was affirmed by their Lordships. *MAHABIR PERSHAD v. ADBIKARI KORI*. **I. L. R., 23 Cal., 942**

144.—*Purchase by conditional sale—Vendor remaining in possession as tenant holding over—Possession not shown to be adverse.*—In 1866 the plaintiff bought the lands in suit by conditional sale-deed, repayable in ten years, from a third party who, under the same document, became his tenant of the said lands. Before the expiration of the ten years the vendor died, and his widow sold her right in the lands and gave possession to G, the transferor of the second defendant. On the expiration of the ten years, the sale to plaintiff became absolute, and G continued to hold over after the expiry of the lease, but there was no evidence to show that G's possession ever became hostile to plaintiff. *Held* that the fact that plaintiff's title ripened into full ownership on the expiration of the ten years provided by the sale-deed did not alter the character of the tenure of G, that his possession never became hostile to plaintiff; that G acknowledged the plaintiff's title in his sale-deed dated 1881 to the second defendant; and that

LIMITATION ACT, 1877—continued.**2. ADVERSE POSSESSION—continued.**

the suit was not barred. *ANANTHA BHATTA v. HOLEYA DEYRU*. **I. L. R., 19 Mad., 437**

145.—*Landlord and tenant—Permanent tenant—Notice to pay enhanced rent or quit the land—Denial of landlord's right to enhance rent—Suit to recover enhanced rent—Limitation Act, s. 23.*—An inamdar gave his permanent tenant notice to pay enhanced rent or quit the land on a certain date. The tenant denied the liability to pay enhanced rent, and, stating that he held the land on payment of Government assessment only, refused to quit. The inamdar, more than twelve years after the date mentioned in the notice, sued the tenant to recover enhanced rent. *Held* that the plaintiff's (inamdar's) right to enhance the rent and to recover the land in default of payment of such rent was barred by limitation, the tenant, so far as the right was concerned, having been holding adversely to him for more than twelve years. *Held* also that s. 23 of the Limitation Act (XV of 1877) had no application to the case. *GOPAL RAO KRISHNA RAJOPADHE v. MAHADEVRAO BALLAL MULE*. **I. L. R., 21 Bom., 394**

146.—*Suit for possession of property purchased at auction-sale in execution of a decree—Effect of formal possession in saving limitation—Possession given under Civil Procedure Code (1882), ss. 318 and 319.*—Where possession of property purchased at auction-sale in execution of a decree is formally given by the Court under s. 318 or s. 319 of the Code of Civil Procedure, although the actual possession may remain with the judgment-debtor, the date of the granting of such formal possession forms, as against the judgment-debtor, a fresh starting point for limitation in respect of a suit for possession of the property sold brought by the auction-purchaser or his representative. *Jaggobundhu Mukerjee v. Ram Chunder Bysack, I. L. R., 5 Cal., 584, and Jaggobundhu Mitter v. Purnanand Gossami, I. L. R., 16 Cal., 530*, referred to. *MANGLI PRASAD v. DEBI DIN*

[**I. L. R., 19 All., 499**]

147.—*Alienation by a Hindu widow—Subsequent adoption by widow—Suit by the adopted son to recover possession—Limitation Act, sch. II, arts. 140 and 141.*—The childless widow of a separated Hindu, being in possession of his property as his heir, alienated it in the year 1868. Twenty years afterwards (13th May 1888) she adopted a son, who in 1890 brought the present suit to recover the alienated property. *Held* that the suit was not barred by limitation. *Per FARRAN, J.*—Whether art. 140 or art. 144 of sch. II of the Limitation Act (XV of 1877) applied to the case, the suit was not barred; for if it fell under art. 140, the possession of the defendants adverse to the widow could not affect the plaintiff's rights, and if it fell, as it seemed to do, under art. 144, the possession of the defendants did not become adverse to the plaintiff until he became entitled to possession of the property upon his adoption. *Srinath Kur v. Prasanno Kumar Ghose, I. L. R., 9 Cal., 934, and Kokilmoni Dassia v. Manick Chandra Joaddar, I. L.*

LIMITATION ACT, 1877—continued**2 ADVERSE POSSESSION—continued**

mortgage and the present suit not having been brought until September 1888 was barred by the Limitation Act (XV of 1877) **BAFU BIN MAHADAJI c MAHADAJI VASUDEO I L R., 18 Bom, 348**

141. ————— *Manager—Land appertaining to muth—Sale of miras maliks (ownership of miras tenure)—Mirasdar on inam estates Position of—Limitation Act (XI of 1877) s 28—Right*

the lands or to recover assessment for three years previous to the suit. The defendant pleaded that the suit was barred by limitation. The plaintiff

tenant the possession of the vendee and of the defendant could not be adverse. *Held* that if defendant's possession was adverse to the ownership of the muth during twelve years after K's death the operation of the law of limitation would not be affected by the fact that there was no legal manager during that time. *Held* further that in the Bombay Presidency the mirasdar on inam estates is only a tenant at quit rent or at a reasonable rent not subject to ejectment so long as he pays it, and as there was nothing in the sale deed passed by K to B which required a different construction to be put on the miras tenure created by it B's possession under it could not be adverse to the muth until there was an assertion by the grantee of his claim to be a permanent

142. ————— *Suit for declaration that lands are khoti—Allegation of fraud—Survey Settlement Act (Bom Act I of 1865)—A mixed khoti village consisting of khoti and dhara lands belonged to two co-sharers P and D each of them*

LIMITATION ACT, 1877—continued**2. ADVERSE POSSESSION—continued**

passed kabulats to Government in alternate years till 1863 when P on account of his advanced age allowed D to pass the kabulat every year. In the year 1867 the survey settlement having been introduced under Bombay Act I of 1865 D refused to pass the annual kabulat. Government thereupon put the village under attachment which was however removed in the year 1878 on his passing the required kabulat. The management of the village was restored to him and certain surplus profits were handed over to him by Government. In the year 1881 P sold his share in the khoti to S who brought

kabulats as a half sharer in the khoti and enjoyed the khoti profits for one year. Afterwards plaintiff No 1 one of S's sons who died in the meanwhile having passed the annual kabulat in 1892-93 and again in 1894-95 and having failed during both the years to recover khoti profits from the lands in dispute

(inter alia) that the claim was time barred. Both

the dhas and entries were made in the revenue records and that but for s 18 of the Limitation Act (XV of

143. ————— *Estate in the possession of the widow of the last male survivor of a family co-parcenary—Possession first obtained through*

LIMITATION ACT, 1877—*continued*.2. ADVERSE POSSESSION—*continued*.

transfer, it was contended that the office and title were held in successive life-estates. If that contention had been right, the period of limitation would have commenced at the death of the plaintiff's father. The Judicial Committee were of opinion that it must be assumed that the origin of the endowment was by gift from the founder, and that, in accordance with the ruling in *Jettendramohan Tagore v. Ganendramohan Tagore* (1872), *L. R., 1 A., Sup. Vol., 47-9 R. L. R., 577*, heritable estates could not be created to take effect as successive life-estates, and inconsistently with the general law. This applied to both the office and the property. *Held* that the law of inheritance did not permit the creation of successive life-estates in this endowment; the above ruling being also contrary to the judgment in *Trilokt Barua v. Niranjan Barua* (*L. R., 7 Boms. 189*); and that the plaintiff could not claim to have been entitled otherwise than as heir to, and from, and through his father, in whose lifetime the title had been extinguished by lapse of time and adverse possession of the defendant. *GSANASAM-LANDA PANDARA SANSADHI v. VELU PANDALAM* (*I. L. R., 23 Mad., 271 L. R., 27 I. A., 69*

152. — *Suit to set aside alienation of property of religious endowment—Trustee's title barred by adverse possession as against his predecessor*—The holder of the office of trustee in a temple succeeded to that office in 1893. His predecessor had remained in office for over twelve years, but had never sued for the recovery of certain lands. A suit being now brought to recover the said lands on the ground that they provided the emoluments of the office of muktaval in the temple.—*Held* that the suit was barred by limitation, the adverse possession held during the previous office-holder's time barring his successor. *CHIDAMBARAM CHETTI v. MINAMMAL*. *I. L. R., 23 Mad., 439*

See RADHARAI v. ANANTRAY BHAGWANT DESHPANDE. *I. L. R., 9 Bom., 198*

153. — *Symbolical possession*—The plaintiff's predecessor in title, one *L N*, acquired the share of 2 annas and 8 pies in certain mouzals by purchase at a sale held in execution of his own decree against one *H N*, and in September 1874 obtained symbolical possession. In December 1874, *H N* and his co-sharers granted a perpetual lease to one *G*, reserving a nominal rent. Subsequently *L N* brought a suit for possession of the 2 annas and 8 pies share against *H N* and his co-sharers, and after the death of *L N* the plaintiff obtained a decree. In March 1882 the plaintiff obtained symbolical possession in execution of that decree. On the 29th January 1887 one *B M* purchased at a sale in execution of a decree against *G* the right of the latter as lessee, and obtained through the Court symbolical possession of the same. In a suit brought by the plaintiff against *B M* and *G* to recover possession of the 2 annas and 8 pies share in December 1887, that is, thirteen years after the grant of the lease by *H N* and his co-sharers to *G*,—*Held* that the suit was

LIMITATION ACT, 1877—*continued*.2. ADVERSE POSSESSION—*continued*.

barred by limitation under art. 141 of the Limitation Act. *Held* also that the lease purporting to be a perpetual lease without reversion to the grantors, and no rights reserved to them, but only a nominal rent, symbolical possession as against the grantors would not be effective as against the lessee and thus save the bar of limitation. *Bejoy Chunder Banerjee v. Kally Proxanna Mookerjee*, *I. L. R., 4 Calc., 327*, referred to. *GOSSAMI DALMAR PURI v. BEPIN BEHARY MITTER*. *I. L. R., 18 Calc., 520*

154. — *Symbolical possession*—The plaintiff purchased the land in dispute on 20th April 1876 at a Court sale held in execution of a decree against defendant's father, and obtained symbolical possession through the Court on 7th September 1876. At the date of the sale, and subsequently thereto, the defendant was in actual possession of the land in question. On 5th September 1888 the plaintiff filed the present suit to recover possession of the land. *Held* that the suit was time-barred, the defendant's possession having been adverse to the plaintiff for more than twelve years. *LAKSHMAN v. MOHR*. *I. L. R., 16 Bom., 722*

155. — *Symbolical possession—Judgment-debtors remaining in actual possession—Subsequent attempt by purchaser to take possession—Resistance or obstruction to execution of decree—Application to remove obstruction converted into a suit under s. 331 of Civil Procedure Code (1882)—Limitation Act (XV of 1877), s. 3, and sch. II, art. 138—Civil Procedure Code (1882), s. 331*—The plaintiff purchased the property in dispute at an auction-sale in execution of a decree, and on the 14th August 1877 he took formal possession, but the judgment-debtors remained in actual possession. On the 18th September 1889, the plaintiff proceeded to take possession, but was obstructed by the defendant, who alleged that he had purchased the property from the judgment-debtors in 1888. The plaintiff then applied for the removal of the defendant's obstruction, and his application was registered as a suit under s. 334 of the Civil Procedure Code. *Held* that the plaintiff's claim was barred by limitation. When his application was converted into a suit under s. 331, the rights of the parties had to be determined as if an ordinary suit for possession had been instituted against the defendant, and either art. 138 or art. 141 of the Limitation Act (XV of 1877) applied. In either case the defendant could avail himself of the judgment-debtors' possession, which was adverse to the plaintiff. *NAMDEV v. RAMCHANDRA GOMATI MARWADI*. *I. L. R., 18 Bom., 37*

156. — *Symbolical possession—Effect of symbolical possession against third parties—Auction-purchaser—Right of auction-purchaser to tack on his own possession to that of judgment-debtor*—The property in dispute belonged to *D*. He sold it to *A* on the 25th April 1873, but did not put the vendee into possession. On the 18th April 1883, *A* sold the property to the plaintiff. On the 4th June 1883, in execution of a money-decree against *D*, the property was put up to sale as his, and

LIMITATION ACT, 1877—continued**2 ADVERSE POSSESSION—continued**

R 11 Calc 731 followed Per CANDY J—The suit was governed by art 144 under which the period of limitation began to run from the time when the possession of the defendants became adverse to the plaintiff on his adoption in 1888. Assuming that the possession of the defendants was adverse to the widow that fact did not affect the plaintiff who did not derive his right to sue from or through her. *MORO NARAYAN JESHI v BALAJI HAHUNATH*
[5 L R, 12 Bom, 809]

148 ———— *Suit by shebait for possession of debutter property alienated by former shebait—Hindu law—Endowment—Position of Hindu idol—Limitation Act art 184*—A suit was brought in 1872 by the shebait of an idol for recovery of khas possession of nokurari property belonging to the idol and for a declaration that a dar mokurari

Act (XV of 1877) *Held* that the idol is a judicial

relating to any property must be done by or through

Moore s I A 270 13 W R, P C 18 Prasanna Kumari Dehya v Gol b Chund Baboo 14 B L R, 450 23 W R 203 L R 21 A 130 Kannan v Nilakandan I L R 7 Mad 337 approved NIRMONY SINGH v JAGABANDHU FOY
[1 L R, 23 Calc, 536]

149 ———— *Formal possession—*
Effe- son dure per- roce tever

19 All 499 referred to NARAYAN DAS v LALTA PRASAD
I L R, 21 All, 289

150 ———— *Diluvation—Subordinate tenure—Suit for recovery of possession of land—Reformation on the site of plaintiff's villages—Burden of proof*—In a suit brought by the plaintiffs on the 10th December 1883 for recovery of

LIMITATION ACT, 1877—continued**2 ADVERSE POSSESSION—continued**

possession of three plots of land on the allegation that the lands in dispute were re-formations on the site of the villages of K and M which were let out in patni and darpatti to third parties in 1868 and that the rights of the patnidar and the darpattidar were reacquired by them in the years 1878 1880, 1883 and 1892 the defence was that the suit was barred by limitation and that the lands were not reformation but accretion to the defendant's village of G. *Held* that as much as a grantor of a subordinate tenure is not bound to sue for trespasses committed against his tenant during the continuance of the tenure and that his right of action accrues when the tenancy comes to an end the suit was not barred by limitation. *Held* also that as the plaintiffs title to and possession of the villages of K and M down to the time of their diluvation was not denied and as it was found that the disputed plots of land were part of the said villages it was not incumbent on the plaintiffs to prove possession of the lands in dispute previous to the diluvation but the onus lay on the defendants to prove adverse possession for more than twelve years prior to the institution of the suit. *Woomer's Chunder Gopto v Roy Narain Roy 10 W R 15 and Dar v Abdul Hamed 8 W R 55 referred to GUNGA KUMAR MITTER v ASHUTOSH GOSSAMI*
[1 L R, 23 Calc, 863]

151 ———— *Suit by hereditary trustee to set aside invalid alienation—Alienation of property of religious endowment*—In a suit brought by an hereditary trustee to set aside certain alienations of the trust property made by his predecessor in title and to have it declared that he was entitled to the sole management of the trust property it appeared that the property was held jointly by plaintiff's father and by the mother of the first defendant. On the 17th September 1868 the first defendant's mother alienated her right to the joint management to the first defendant who however never got possession until the 13th February 1869 on which date plaintiff's father alienated his right to

VELU PANDARAM v GNANASAMBANDA PANDARA SANNADHI GNANASAMBANDA PANDARA SANNADHI v VELU PANDARAM
I L R, 19 Mad, 243

In the same case in the Privy Council—*Held*

office and the claim for the property in regard to the application of art 124 of sch II of the Act and of s. 28. If there were art 144 would apply to the claim for the property. In order to fix the starting point for limitation at a date later than that of the

LIMITATION ACT, 1877—

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1. The "AV" of 1977, applied to the

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10-10-68
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11. L. R., 18 Bom., 172

art. 115 (1871, art. 147; 1859,

4. 1. 51. 15).

1. $\frac{d}{dt} \left(\frac{1}{2} m v^2 \right) = \frac{1}{2} m \frac{d}{dt} (v^2) = \frac{1}{2} m \frac{d}{dt} (v_x^2 + v_y^2 + v_z^2)$

On the 1st of July, 1870, the Collector in 1870, appointed a suit of recovery with *A. B. and C.* on the 1st of July, 1870, to pay for the suit, and return the 1st of July, 1870, for it. *B. and C.* were appointed to pay, with within a few months of the 1st of July, 1870, and since the date of the judgment. The suit was brought against *C.* and the representatives of *A. and B.* to cover the amount of the suit, and a decree was passed against *C.* on his appeal. But the representatives of *A. and B.* say that the suit was barred. *Held* that it was barred by the Act XIV of 1870. *B. and C.* in accordance with the English cases (the *East India Co. v. The Lord Judge* dissenting), that the date of suit was from the date of the judgment to repay the money on demand, and not from the date of the decree, and therefore the suit was barred. **PARAJATI CHARAN MOOKHERJEE v. RAM-
DAS DAS MATHUR.**

[5 B. L. R., 303: 10 W. R., 164 note

2001 100, 103 110

Dr. P. P. BHATTACHARYA D.D. & ABRAHAM CHARAN
CROSBY . 7 B. L. R., 489: 16 W. R., 164

2. — — — Dep't of Government re-

transacted with Collector pending partition.—Account, *Att. Gen. v. Collector*, &c. — During the pendency of a suit, the plaintiff purchased a share in a small mill; and as the proportion of the Government revenue of each shareholder had not been ascertained the shareholders, including the plaintiff's vendor, and subsequently the plaintiff, paid to the Collectorate what they thought due from them on account of Government revenue. Upon an account stated in 1857 it was ascertained that, after all necessary deductions, a sum of Rs55 was due to the plaintiff, who in 1861 applied to the Collector for payment of the amount;

LIMITATION ACT, 1877—continued

2 ADVERSE POSSESSION—continued

was purchased by the defendants, who were put into possession by the Court on the 2th March 1885. On the 29th March 1885 the plaintiff sued *A* and *D*'s wife (*D* being then in prison) to recover possession of the property. A decree was passed in execution of which he obtained symbolical possession through the Court on the 8th February 1886. When he sought to take actual possession, he was resisted by the defendants. Thereupon the

of 1877). The defendants had a right to tack on the period of their own adverse possession as against the plaintiff to that of *D*'s adverse possession as against *A*. The symbolical possession obtained by the plaintiff did not break up the continuity of the adverse possession of the defendants and the person through whom they derived their title. *HARJIVAN* v. *SHIVRAM* I L R, 19 Bom, 620

157. ——— Suit for possession of

MAHARAJA

I L R, 19 Cal, 110

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LIMITATION ACT, 1877—continued.

was not barred by limitation. *Brojo Lal Singh v. Gour Charan Sen*. I. L. R., 12 Calc., 111

4. ———— *Mortgage—Mortgagee, Suit by a, to realize mortgage-debt by sale of mortgaged property, under power of sale—Cause of action—Construction.*—By a mortgage-bond the first defendant mortgaged, on the 1st January 1864, certain property to plaintiffs' deceased father, with an implied power to sell the same if the debt was not satisfied at the expiration of seven years from that date. On the 2nd January 1883, the first plaintiff filed a suit in his own name, as manager of the family, to have the debt realized by the sale of the mortgaged property. The third defendant insisted upon plaintiff's other two brothers being joined as co-plaintiffs, and they were so joined on the 1st March 1883, at which date both the lower Courts were of opinion that the suit was barred under s. 23 and art. 132 of the Limitation Act (XV of 1877). On appeal by the plaintiffs to the High Court.—*Held*, reversing the lower Courts' decrees, that plaintiffs' suit was governed by art. 147 of the Limitation Act (XV of 1877), and therefore not barred. By the instrument sued on, the property in question was mortgaged to the plaintiffs' father with an implied, if not express, power to sell the same in the event of the mortgage-debt not being paid at the expiration of seven years from the date of the mortgage. The period of limitation was sixty years from the 1st January 1871. *GOVIND BHAI CHAND v. KALNAK*

[I. L. R., 10 Bom., 592

5. ———— and art. 132—*Suit on a mortgage-bond—English mortgage—"Mortgage" and "Charge"—Transfer of Property Act, ss. 55, 60, 67, 83, 86, 87-89, 92, 93, 100.*—A suit on a mortgage-bond to enforce payment by sale of premises hypothecated is governed by art. 132, and not art. 147, of the Limitation Act. *Brojo Lal Singh v. Gour Charan Sen*, I. L. R., 12 Calc., 118, overruled. *Shib Lal v. Ganga Pershad*, I. L. R., 6 All., 551, dissented from. The clear distinction drawn for the first time between "mortgage" and "charge" in the Transfer of Property Act is not observed in the Limitation Act. Art. 147 of the Limitation Act relates to special kind of mortgage known as English mortgage, and includes only that class of suits in which the remedy is either foreclosure or sale in the alternative. *GIRWAR SINGH v. THAKUR NARAIN SINGH*

[I. L. R., 14 Calc., 730

6. ———— and art. 132—*Mortgage as distinguished from a charge.*—In 1867 the defendant borrowed R125 from the plaintiff and gave him a bond agreeing to pay interest at two per cent. per month. The bond provided that the whole debt, including principal and interest, was to be repaid within four years from the date of its execution. It further stated that certain property had been mortgaged to the plaintiff as security for the loan, and that, if the principal and interest were not paid within the time fixed, the plaintiff was to take up the management of the property. It also contained the following clause: "We will redeem the mortgaged property on the day on which

LIMITATION ACT, 1877—continued. —

we shall pay the amount of the principal and the amount of the interest that may be found due in making up the account." In 1886 the plaintiff sued the defendants to recover by sale of the property the sum of R250 as principal and interest due on the bond. It was contended that the bond created merely a charge upon the property in question, and was not a mortgage, and that the suit was barred by art. 132 of sch. II of the Limitation Act (XV of 1877). *Held* that the document was a mortgage, and that the suit was not barred being governed by art. 147, and not by art. 132 of sch. II of the Limitation Act. *MOTIRAM VITAI* . . . I. L. R., 13 Bom., 91

7. ———— *Mortgage as distinguished from a charge—Suit to enforce mortgage lien by sale of mortgaged property—Construction of mortgage.*—A bond contained the following stipulation as regards the liabilities of the sureties: "In respect of this we have given to you in writing as a nazar gahan (i.e., sight mortgage) the fields which belong to ourselves, and which we ourselves are enjoying. If we do not pay according to contract, you may sell the said fields through the Court and recover the amount. If any balance remains we will pay it off personally or by means of our other property." *Held* that the above stipulation created a mortgage and not a mere charge on the fields in question, and that art. 147 of sch. II of the Limitation Act (XV of 1877) applied to a suit by the obligee against the surety under the bond to enforce his lien by sale of the property mortgaged. *ONKAR RAMSHET MARWADI v. GOVARDHAN PARSHOTAMDAS* . . . I. L. R., 14 Bom., 577

8. ———— *Mortgage—Bond—Charge on immovable property—Limitation Act, art. 132.*—Where a bond given for a loan contained the following condition as to security and repayment of the money: "The security pledge (taran gahan) for this is our own property, Survey Nos. 170 and 778 in the village ped, on all the land of which two numbers do you take satisfaction for the said money; and if it should be insufficient, I will personally make satisfaction."—*Held* that the transaction was a mortgage governed by art. 147, sch. II of the Limitation Act (XV of 1877), and not a charge governed by art. 132. *Khenji v. Rama*, I. L. R., 10 Bom., 519, and *Rangasami v. Muttukumarappa*, 10 Mad., 509, dissented from. *Motiram v. Vitai*, 13 Bom., 90; *Venkatesh v. Narayan*, I. L. R., 15 Bom., 183; and *Bavaji v. Tatyia*, P. J., 1891, p. 35, followed. *DATTO DUDHESHWAR v. VITHU*

[I. L. R., 20 Bom., 408

9. ———— *Usufructuary mortgage—Personal covenant to pay.*—Where a usufructuary mortgage contains a personal undertaking to pay the amount secured thereby, the limitation applicable to a suit brought on the mortgage is governed by art. 147, Limitation Act XV of 1877. *Sivakami Ammal v. Gopala Savundaram Ayyan*, I. L. R., 17 Mad., 131, referred to. *UDAYANA PILLAI v. SENTHIVELU PILLAI* . . . I. L. R., 19 Mad., 411

LIMITATION ACT, 1877—continued

but the application was rejected as the money had been previously drawn away by certain creditors of his vendor. In 1867 he sued the Collector for recovery of the amount. The defence set up was that the suit was barred by lapse of time. *Held* that

CHANDRA v. COLLECTOR OF DACCA
[3 B L R, Ap, 57 11 W R, 491]

In another case the Collector was held to be a depository within cl 15 of s 1 Act XIV of 1859 as to a claim for mahkama. **GOVERNMENT v. KHOOB NARAIN SINGH** 2 W R, 162

3 ——— collector—*Depository*—*Suit to recover surplus sale proceeds of sale for arrears of revenue*—Where A instituted a suit in November 1889 to recover from the Secretary of State in Council the surplus sale proceeds of three talukhs sold for arrears of Government revenue on

See SECRETARY OF STATE FOR INDIA v. GURU PROSHAD DHUR I L R, 20 Cal, 51

1 ——— art 148—*Suit to recover possession of mortgaged property—Demand*—In 1812 H C executed in favour of the plaintiff his brother who was in possession of the family property as kurta and administrator of the estate of their father a mortgage of his (H C's) share of the estate in con-

agreed that a certain portion should be allotted to

MARKEY J—A demand was made in 1847 on the agreement to partition the property. The suit therefore was barred by Act XIV of 1859 as being brought more than twelve years after the cause of

LIMITATION ACT, 1877—continued

IX of 1871 moreover only applies to cases in which some part of the principal interest of the mortgage debt has been paid. **RAJ CHUNDER GHOSAL v. JAGDIPMOHINI DEBEE**

[I L R, 4 Cal, 283 3 C L R, 336]

2 ——— and arts 144, 132—*Suit for foreclosure*—The period of limitation prescribed for a suit for foreclosure by the Limitation Act (IX of 1871) is either twelve years under art 132 or sixty years under art 149 of sch II of that Act. **GANPAT PANDURANG v. ADARJI DADABHAI**

[I L R, 3 Bom, 312]

1 ——— art 147—*Mortgage—Sale or foreclosure—Adverse possession*—In 1823 the trustees of a marriage settlement vested the trust funds in the mortgage of a house and premises at Entally, in the neighbourhood of Calcutta. The mortgagor was the first tenant for life under the settlement and it was agreed that he should be entitled to remain in the house as long as he pleased the rent of the premises being set off against the income of the trust funds to which he was entitled under the settlement. In execution of a money decree against the mortgagor his right title and interest in the premises were purchased by the judgment creditor a lady who at the time of execution and sale lived in the mortgagor's house. After the purchase all parties continued to live in the house as before. The mortgagor died on the 14th of August 1867 and on the 13th of August 1879 the present suit for sale or foreclosure was instituted by the plaintiff in whom the legal and beneficial interest in the trust funds had become vested. *Held* that the position of the judgment creditor under the sale of 1866 was not adverse to the plaintiff or those under whom he claimed that the suit was not barred by limitation and that plaintiff was entitled to a decree for sale. **ANANIMAY DAS v. DIARENDRA CHANDRA MUKERJEE**, 8 B L R 122, distinguished. **MANLY v. PATTERSON**

[I L R, 7 Cal, 394]

2 ——— and art 132—*Suit to enforce payment of money charged upon immoveable property—Suit by a mortgagee for sale*—A suit upon a bond for money payable on demand by which

(Limitation Act) **SHIB LAL v. GANGA PRASAD**

[I L R, 6 All, 551]

3 ——— *Mortgagor and mortgagee—Suit to follow mortgaged property*—A mortgaged his property to B in 1867 by a simple mortgage. In 1868 A sold the property to C. In 1870

by limitation under cl 132 of the Limitation Act (Act XV of 1877). *Held* that the suit was governed by art 147, sch II of Act XV of 1877, and therefore

LIMITATION ACT, 1877—continued.

of s. 1 of Act XIV of 1859. *LALL DOSS v. JAMAL ALI* . . . B. L. R., Sup. Vol., 901 [9 W. R., 187

4. ————— *Laches—Estoppel.*—The laches of a mortgagor in taking no steps for many years to enforce his alleged rights may afford evidence against the existence of those rights, but cannot estop him from asserting them, if they do exist, at any time within the period of sixty years allowed by s. 1, cl. 15, Act XIV of 1859. *JUGGERNATH SAHOO v. MAHOMED HOSSEIN*

[14 B. L. R., 386 : 23 W. R., 89
L. R., 2 I. A., 49

5. ————— *Suit by a mortgagor for recovery of possession from a mortgagee holding over after expiry of the term of a usufructuary mortgage.*—When a mortgagee in possession under a usufructuary mortgage, holds over after the time limited in the mortgage-deed for surrender of the property, his possession does not, by that fact alone, become adverse to the mortgagor, who still has a period of sixty years within which to sue for recovery of possession. *Jaggurnath Sahoo v. Mahomed Hossein*, 14 B. L. R., 386 : L. R., 2 I. A., 49, referred to. *POKHPAL SINGH v. BISHAN SINGH*

[I. L. R., 20 All., 115

6. ————— *Act XIV of 1859, s. 1, cl. 15—Act IX of 1871, s. 29 and art. 148—Usufructuary mortgage—Extinction of mortgagor's title—New starting point by acknowledgment.*—The representatives in estate of a mortgagor, who executed a usufructuary mortgage, dated 17th October 1788, sued the heirs of the mortgagee in 1893, alleging payment of the mortgage in 1881, and claiming the possession of the mortgaged property or other relief. The suit, in the absence of acknowledgment made within sixty years satisfying the requirements of the law of limitation for extension of that period, was barred on the 17th October 1848, by the effect of Act XIV of 1859, s. 1, cl. 15, which barred the suit after the 1st January 1862. Afterwards, by the effect of Act IX of 1871, s. 29, the right of property in the mortgagor was extinguished. In none of the documentary evidence adduced by the plaintiffs was there shown to have been made during the sixty years from the date of the mortgage onwards any written acknowledgment satisfying the requirements of the above cl. 15, and thereby giving ground for computing limitation from the date of such acknowledgment. Nor did the fact that a lease was made on the 8th January 1872 of some of the mortgaged property by one of the then mortgagees to one of the mortgagors, the lessor describing himself as usufructuary mortgagee, preclude the defendants from asserting their true title. The description neither estopped the alleged mortgagee from denying that he was in that character at the time of this suit, nor was it a representation which required that he should make it good. It was no essential part of a contract between these parties, and it did not affect the issue now raised. The judgment in *Citizens Bank of Louisiana v. First National Bank of New Orleans*, L. R., 6 E. & I.,

LIMITATION ACT, 1877—continued.

App., 352, referred to. *FATIMATUNNISSA BEGUM v. SUNDAR DAS* . . . I. L. R., 27 Calc., 1004 [L. R., 27 I. A., 103
4 C. W. N., 585

Upholding the decision of the High Court in *SUNDAR DASS v. FATIMATUNNISSA* 1 C. W. N., 153

7. ————— *Permissive occupation of house—Suit to recover house from heirs of tenant.*—About twenty-five years before suit brought,—*R*, being possessed of a house, allowed *K* to occupy it without paying rent, on condition that *K* would keep it in repair, and restore it to *R* on demand. Nine years afterwards, and without any demand having been made by *R*, *K* died, and his heirs continued to occupy the house, apparently on the same terms as *K* had done. In a suit brought by *R* against the heirs of *K* to recover possession of the house, it was held that *K* could not be deemed to have been a depositary of the house within the meaning of s. 1, cl. 15, of Act XIV of 1859, and the case was therefore governed by s. 1, cl. 12, of that Act. *RADHABHAI v. SHAMA*

[4 Bom., A. C., 155

8. ————— *Conditional sale—Suit for redemption.*—Redemption by the mortgagor of mortgaged premises held by a mortgagee under a gahan lahan mortgage is not barred by the mortgagee's possession of the premises for the period of twelve years after the date on which, according to the terms of the mortgage-deed, the mortgage is to be converted into a sale. Such a case is governed by the provisions of Act XIV of 1859, s. 1, cl. 15. *KRISHNAJI alias BABAJI KESHAV v. RAJJI SADASHIV* . . . 9 Bom., 79

See *SHANKARBHAI GULABBHAI v. KASSIBHAI VITHALBHAI* . . . 9 Bom., 69

RAMJI BIN TUKARAM v. CHINTO SAKHARAM
[1 Bom., 199

RAMSHET BACHASHET v. PANDHARINATH
[8 Bom., A. C., 236

9. ————— *Suit for redemption—Adverse possession.*—A mortgagor sued his mortgagee to redeem, joining as defendant the person in possession of the mortgaged land, who claimed to hold adversely to both the mortgagor and the mortgagee. *Held* that the possession of the last defendant being a trespass not on the possession of the mortgagor, who had only the equitable estate, but on the possession of the mortgagee, in whom the legal estate was vested, and the person in possession not pretending to be a *bona fide* purchaser from the mortgagee, he did not come within the exception in s. 5 of Act XIV of 1859; that the trespasser could only succeed to such estate as the mortgagee possessed; and consequently that the limitation applicable to the suit as against him was sixty years according to s. 1, cl. 15, of Act XIV of 1859, the effect of which was not altered by any hostile possession commenced on a title independent of the mortgage. *VITHOBA BIN CHABU v. GANGARAM BIN BIRAMJI* . . . 12 Bom., 180

10. ————— *Right of purchaser.*—Where *B*, an old judgment-creditor of *K*'s father, took out execution against *K*, whose rights in an estate

LIMITATION ACT, 1877—continued

10. ————— *Equitable mortgage by deposit of title deeds—Suit by equitable mortgagee for foreclosure and sale—Right of suit—An equitable mortgagee by deposit of title deeds is a mortgagee within the meaning of art 147, sec 11 of the Limitation Act (XV of 1877) and the period of limitation for a suit by such a mortgagee is sixty years of sale.*
MISTRY I L R., 14 BOM., 200

11. ————— *Mortgage bond containing a power of sale in case of default—Suit by a mortgagee to recover the mortgage debt from mortgaged property and from mortgagor personally—*

12. ————— *Bonds creating interest in land, Construction of—Mortgage—Charge on*

SHETTI & NARAYAN SHETTI

(I L R., 15 Bom., 183

13. ————— and art. 144—*Suit for foreclosure or sale—Transfer of Property Act (IV of 1882), ss 58 (c), 67, 87—Mortgage by conditional sale—Decree for foreclosure and possession—On 28th March 1871 the defendant's father borrowed a sum of money from the plaintiff's father and placed him in possession of certain land under an instrument of mortgage, which provided for the application of the usufruct in liquidation of the interest and then in reduction of the principal the instrument also contained a covenant for the repayment, in four years of the balance that might then be due by the mortgagor, and a stipulation that, on default the mortgagor was to surrender the property to the mortgagee as if it had been sold to him. In 1874 the mortgagor resumed possession without discharging the mortgage debt. The mortgagee having died his sons on 14th April 1888 filed the present suit on the mortgage and*

14. ————— *Suit for sale of mortgaged property—Bom Reg F of 1827, s 15,*
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LIMITATION ACT, 1877—continued

cl 3—*Special agreement—Plaintiff brought this suit in 1895 on a mortgage bond dated 1870, to recover the balance due on the mortgage by sale*

POSSESSION IN MORTGAGE

could not be enforced as the mortgage bond contained a special agreement which took the case out of cl (3) of s 15 of Bombay Regulation V of 1827. On appeal—*Held*, reversing the decree, that s 15 of Bombay Regulation V of 1827 was not applicable, as the mortgagee never was in possession and that the claim to enforce the mortgage security by sale was not barred. **SIDHESVAR & BABARI**

(I L R., 23 Bom., 781

15. ————— *Mortgage by conditional sale—Mortgagee in possession—Suit for foreclosure—Redemption—A mort-*

art. 148 (1871, art. 148; 1859, s. 1; cl 15)

See CASES UNDER S. 19—ACKNOWLEDGMENT OF OTHER RIGHTS

1. ————— *Suit for redemption—Nature of title of mortgagee—The period of limitation for a suit to redeem a mortgage of immovable*

NAGAMMA

*Relation of trust—Cl 15 s 1, Act XIV of 1859 applied when there was some relation of trust whether the property was given in mortgage or pawn or simply deposited for safe custody. **RUTON MONER DEBARI & GUNGA MONER DEBARI CHOWDHRAIN** 3 W R., 94*

3. ————— *Suit by mortgagor for possession of mortgaged property—In a suit by a mortgagor after a mortgage has been satisfied for the recovery of the mortgaged property the period of limitation applicable is that prescribed by cl 15*

LIMITATION ACT, 1877—continued.

Singh v. Ali Ahmad, I. L. R., 8 All., 58, referred to. *NURA BIBI v. JAGAT NARAIN*

(I. L. R., 8 All., 205)

18.

Mortgage—Redemption

by co-mortgagee—Sued by other mortgagees against redeeming mortgagee for redemption of their shares. Where one of several co-mortgagees redeems the whole mortgage, he thereby puts himself into the position of the mortgagee as regards that portion of the mortgaged property which represents the interests of the other co-mortgagees, and the period of limitation applicable to a suit for redemption brought by the other co-mortgagees is that provided for by art. 148 of sch. II of the Limitation Act (XV of 1877). Such period begins to run from the date when the original mortgage was redeemed, and not from the date of its redemption by the aforesaid co-mortgagee. In 1828 one of several co-mortgagees redeemed an usufructuary mortgage executed in 1822 and obtained possession. The other mortgagees brought a suit against the heir of the redeeming mortgagee in 1886 for redemption of their shares in the mortgaged property. *Held* that the limitation applicable to the suit was that provided by art. 148, sch. II of the Limitation Act (XV of 1877); that time ran, not from the date of the redemption in 1828, but from the time when it would have run against the original mortgagee if he had been a defendant, i.e., the date of the original mortgage of 1822; and that the suit was therefore barred by limitation. *Nura Bibi v. Jagat Narain, I. L. R., 8 All., 205, and Raghubir Sahai v. Runyad Ali, Weekly Notes, All., 1886, p. 152, followed. Far-un-nissa v. Muhammad Yar Khan, I. L. R., 8 All., 24, distinguished. Ram Singh v. Baldeo Singh, Weekly Notes, All., 1885, p. 500, referred to. ASHFAQ AHMAD v. WAZIR ALI*

(I. L. R., 11 All., 423)

I. L. R., 14 All., 1

19. ———— *Suit for redemption—*

Mortgagee purchasing equity of redemption from one without title to it—Adverse possession of mortgagee against true owner of equity of redemption. In the absence of any act showing that the mortgagee is asserting himself against the owner of the equity of redemption, his possession is not adverse against the latter as regards limitation. The mere assertion of his claim by the mortgagee would not affect the right of the real owner of the equity of redemption where a person having no right in the property pretends to sell to the mortgagee the equity of redemption. *PANDU LAKSHMAN MASUREKAR v. ANUPMA*

I. L. R., 21 Bom., 793

20. ———— *Limitation Act (IX of*

1871), s. 148—Acknowledgment of title by one of several mortgagees as agent for the others—Acknowledgement by one of several heirs of the mortgagee—Redemption, Suit for. Under art. 148 of the Limitation Act (IX of 1871), an acknowledgment of the mortgagor's title by one of several mortgagees as agent for the others is wholly ineffectual, and does not bind the rest. So, too, is an acknowledgment by one of several heirs of the original mortgagee without effect. The expression "some persons claiming under him" in art. 148 of the Act means

LIMITATION ACT, 1877—continued.

some person claiming under him the entirety of the mortgagee's rights. The property in dispute was mortgaged by H B to the firm of K B in 1816. In 1830 J, one of the sons and heirs of K, who was then manager of the firm, on behalf of the whole family, sub-mortgaged the property in dispute to a third party, under a bond which recited the original mortgage by H B to K. In 1885 the defendant, who was a descendant of K, redeemed the sub-mortgage effected by J. In 1887 the plaintiff, having purchased the equity of redemption from H B's descendants, filed the present suit for redemption of the mortgage of 1-16. The plaintiff relied on the acknowledgment made by J in 1830 as giving a fresh starting point to limitation. *Held* that the suit was barred by limitation. The acknowledgment by J, whether as manager of the firm or as one of the heirs of the original mortgagee, was not sufficient under art. 148 of the Limitation Act (IX of 1871). *BHOOGHAL v. AMRIT-LAL*

I. L. R., 17 Bom., 173.

21. ———— and art. 132—*Interest*

—Mortgagee's right to interest in a redemption suit—Extent of the right—Transfer of Property Act (IV of 1882), s. 65. In 1882 the plaintiffs sued to redeem a mortgage effected in 1833. The Court of first instance allowed the mortgagee interest from the date of the bond. The Appellate Court reduced the interest awarded to the period of six years. *Held*, reversing the decision of the lower Appellate Court, that the mortgagee was entitled to claim interest from the date of the bond up to the date of the decree. Art. 148, and not art. 132, applies to such a suit; but no provision of limitation is made by the article for the payment of interest on the sum due to the mortgagee. In s. 58 of the Transfer of Property Act, the mortgage-money is interpreted to include the interest due, and no limit to the payment of interest is fixed. *DAUDBHAI RAMBHAI v. DAUDBHAI ALIBHAI*

(I. L. R., 14 Bom., 113)

art. 149 (1871, art. 151; 1859, s. 17).

1. ———— *Suit by or on behalf of Secretary of State for India.* Art. 149 of the Limitation Act applies only to suits brought by, or on behalf of, the Secretary of State, nor to a suit brought by a Municipality. *SECRETARY OF STATE FOR INDIA v. KOTA BAPANAMBA GARU*

(I. L. R., 19 Mad., 165.)

2. ———— *Suit to establish right to julkur—Beng. Reg. II of 1805, s. 2.* A suit by Government to establish its right and title to a julkur was barred by limitation under s. 2, Regulation II, 1805, if brought after the expiration of sixty years' adverse possession against Government. *COLLECTOR OF RUNGPORE v. PROSUNNO COOMAR TAGORE*

[5 W. R., 115]

3. ———— *Suit for costs—Public right—Exemption from limitation.* In a suit for the recovery of costs incurred by the Government of Bengal, in virtue of the Stat. 3 & 4 Wil. IV, c. 41, authorizing the Crown to appoint the East India Company to take charge of appeals and bring them to a hearing, *Held* the recovery of such costs did not constitute a "public right" exempting from

LIMITATION ACT, 1877—continued

11 ————— *Mad Reg II of 1902*
s 18 cl 4—Right of redemption of other mortgage—
 In 1811 A established her proprietary right to lands
 as against B and an other mortgage then in posses-
 sion
 gagee
 sue
 continued to be as to the suit until 1800
 it is

[1 Mad, 143]

12 ————— *Suit for redemption—*
Assertion of adverse title—It was held (in accord-
ance with the opinion of the Full Bench) that the
mere assertion of an adverse title will not enable a
mortgagee in possession to abbreviate the period of
sixty years which the law allows to a mortgagor to

13 ————— *Suit for redemption 456*
 (a) of mortgage—Adverse possession—Title,

MAD v LALTA BAKSH I L R, 1 All, 655

14 ————— *Suit for redemption—*
 Art 148 sch II of the Limitation Act 1871 applies
 to suits for redemption and to such suits not titled

15 ————— and art 145—*Right to*
officiate as priest Nature of suit to establish—
Immoveable property—A right to officiate as priest
at funeral ceremonies of Hindus is in the nature of
immoveable property, and a suit for redemption of

LIMITATION ACT, 1877—continued

such right therefore falls under art 181 and not
 under art 145 of the Limitation Act. BAGHOO
 PANDY v KASSY PANDY

[1 L R, 10 Cal., 73 13 C L R, 233]

16 ————— *Mortgage—Subsequent*
agreement conveying to mortgagee for a term of
years—Effect of such agreement—Once a mort-
gage always a mortgage—Suit by heirs of mort

[1 L R, 10 Cal., 73]

17 ————— and art 184—*Joint*
mortgage—Redemption by one mortgagor—Suit by
other mortgagor for his share—Suit for redemp-
tion—Transfer of Property Act (IV of 1882),

contended that a much longer period had expired
 since the date of the mortgage that forty one years
 had elapsed since C transferred his rights as mort-
 gagee that they had redeemed the property twenty-
 one years ago and had been since its redemption in
 proprietary and adverse possession of the shams in
 suit and that the suit was barred by limitation
 Neither party was aware of the date of the mortgage,
 and neither adduced any proof on the point Held,
 applying the equitable principle adopted in ss 95
 and 100 of the Transfer of Property Act (IV
 of 1882) that the owner of a portion of a mort-
 gaged estate which has been redeemed by his co-mort-
 gagor has the right to redeem such portion from his
 co-mortgagor and a suit brought for that purpose

LIMITATION ACT, 1877—continued.

Appeal from decree or order—Period from which time runs.—The time for presenting an appeal against a decree or order is thirty days from the date of such decree or order (art. 152 of the Limitation Act (XV of 1877)). The date of the decree or order is the date on which judgment is pronounced. *YAMAJI v. ANTAJI*

[I. L. R., 23 Bom., 442]

—art. 155 (1871, art. 153).

See APPEAL IN CRIMINAL CASES—ACQUITTALES, APPEALS FROM.

[I. L. R., 2 Calc., 436]

Appeal in criminal case—Appeal from the Resident's Court, Bangalore.—A person who was being defended by Counsel on a criminal charge interfered in the examination of a witness and made a defamatory statement with regard to his character. He was now charged with defamation and convicted in the Resident's Court at Bangalore. On an appeal to the High Court, preferred more than sixty days after the conviction, it was contended that it was not an appeal under the Criminal Procedure Code, but under the Extradition Act; and sixty days' limitation therefore did not apply to it. *Held* that the appeal should be admitted. *HAYES v. CHRISTIAN*

[I. L. R., 15 Mad., 414]

—art. 156—*Burma Courts Act, 1875, ss. 49, 97—Appeal from Recorder of Rangoon.*—An appeal from the Court of the Recorder of Rangoon to the High Court is an appeal under the Civil Procedure Code, and must be made within the time prescribed by art. 156, sch. II of the Limitation Act. *AGA MAHOMED HAMADANI v. COHEN*

[I. L. R., 13 Calc., 221]

—art. 158—*Application to set aside award—Ground for setting aside award—Civil Procedure Code, ss. 521, 522.*—Where, in accordance with an award irregularly made, a decree was passed by the Court from which the defendant appealed, *Held* that the defendant was not precluded from appealing to the Judge from the first Court's decree, because he had not applied to set aside the award within the ten days allowed by art. 158, sch. II of the Limitation Act, inasmuch as that article applied to applications referred to in s. 522 of the Civil Procedure Code, i.e., applications to set aside an award on any of the grounds mentioned in s. 521, and the defendant did not contest the award on any of those grounds. *MUHAMMAD ABID v. MUHAMMAD ASGHAR*

[I. L. R., 8 All., 64]

—art. 159—*Suit under Ch. XXXIX, ss. 532-538, of the Civil Procedure Code (1882)—Application for leave to defend suit—Date of service of summons—Sheriff's return of service.*—In a suit under Ch. XXXIX of the Civil Procedure Code (summary procedure on negotiable instruments) the defendant obtained an *ex-parte* order on the 9th January 1896 for leave to appear and defend the suit. The plaintiff on the 23rd January 1896 obtained an order calling on the defendant to show cause why the order of the 9th January 1896 should

LIMITATION ACT, 1877—continued.

not be set aside on the ground that the application was not made within ten days from the date of the service of summons. The date of service as shown in the Sheriff's return was the 23rd December 1895. The defendant alleged he had not come to know of the service till the 5th January 1896, as he was not at that time residing at his dwelling-house when the service was alleged to have been effected. *Held* that, as regards limitation, the only date to which reference could be made was the date shown in the Sheriff's return, and that the Court could not at the present stage of the case allow the defendant to show a state of things different from that appearing in his petition. *MADHUB LALL DURGUR v. WOOPENDRA NARAIN SEN*

I. L. R., 23 Calc., 573

—art. 162.

See DIVORCE ACT, s. 16.

[I. L. R., 6 Bom., 416]

—art. 164 (1871, art. 157; Civil Procedure Code, 1859, s. 119).

1. ——— *Obligation on defendant against whom ex-parte decree has been passed.*—The object of s. 119, Act VIII of 1859, was to make it imperative on a defendant against whom an *ex-parte* decree had been passed, and who desired to come in and set aside that decree, to apply to the Court as soon as possible after he had notice of the passing of the decree, i.e., within a reasonable time not exceeding thirty days from the first actual execution of process to enforce the judgment. *GOLAM AHYAH v. SHAM SOONDER KOONWAREE*

[7 W. R., 375]

2. ——— *Meaning of "executing" process of judgment.*—Process of enforcing a judgment (within thirty days from which a defendant may apply to set aside an *ex-parte* decree) has not been executed within the meaning of s. 119, Act VII of 1859, until the proceedings in execution have been brought to a termination by a sale of the property attached. *RADHA BINODE CHOWDHRY v. MUDHOO SOODUN SINGAR*

7 W. R., 198.

3. ——— *Act X of 1859, s. 58—Ex-parte decree, Application to set aside.*—Process for enforcing judgment was executed within the meaning of s. 119 of Act VIII of 1859 and s. 58 of Act X of 1859, when an attachment of the property of the defendant had taken place; and any application by the defendant under those sections to set aside an *ex-parte* decree must be made within thirty and fifteen days, respectively, from the date of the attachment. *RADHA BINODE CHOWDHRY v. DIGAMBUREE DOSSEE, NUND KISHORE DOSS v. MAHARAJA OF BURDWAN*

[B. L. R., Sup. Vol., 947: 9 W. R., 236]

4. ——— The thirty days "after any process for enforcing the judgment has been executed," within which a defendant might apply under s. 119, Code of Civil Procedure, for an order to set aside an *ex-parte* decree, meant thirty days after the execution of any process against the person or

LIMITATION ACT, 1877—continued

Limitation within Regulation II of 1805 GOVERNMENT OF BENGAL v SHURRUFUTTOONISSA

[3 W R, P C 31
8 Moore's I A, 225

4. ——— Suit by Government for maintenance of a ghatali tenure in which alter-

5 ——— and s 28—Suit by Crown for declaration of title and possession of forest land Mad Reg II of 1802—Survival of right—Limitation Act 1859 In a suit instituted in March 1879 by the Crown for a declaration of title to certain forest land and for possession of a

1877, to show possession of the proprietary rights claimed within sixty years or if the defendants proved possession that such possession commenced

suit was barred by adverse possession for twelve years prior to April 1st 1873—Held that even if Regulation II of 1802 applied to claims by the Crown inasmuch as the Regulation only barred the remedy and did not extinguish the right and Act XIV of 1859 did not extend to such a claim, the right subsisted when the Limitation Act of 1871 came into operation and as long as that Act was

SECRETARY OF STATE FOR INDIA v VINA RAYAN

[I L R, 9 Mad, 175

8 ——— Suit by Government for recovery of stamp duty in pauper suit—Five years after the dismissal of a pauper suit from the decree in which no appeal had been preferred, Government sought recovery of the stamp duty by attachment and sale of the pauper plaintiff's property Held that the claim being a 'public claim' within s. 17, Act XIV of 1859 was not barred COLLECTOR OF SOUTH ARCOOT v THATHA CHARRY 8 Mad, 40

SHAMU MAHOMED v MAHOMED ALI KHAN

[3 B L R, Ap, 22. 11 W. R, 67

LIMITATION ACT, 1877—continued

7 ——— Suit after dispossession—

THE 24 PRAGUNNAHS

[7 W R, P C, 21 11 Moore's I A, 345

8 ——— Lessee under Government—The mere fact that the plaintiff claims as a lessee under Government does not entitle him to the benefit of s 17 Act XIV of 1859 ASU MIA v RAJU MIA 1 B L R, A C, 34 10 W R, 78

9 ——— Suit by purchase of Government rights in a khaz mihal—A suit by the purchaser of the rights of Government in a khaz mihal to obtain possession is governed not by the limitation of sixty years but by that of twelve years HOBBIN BUKSH v AMEENA KHATOON

[20 W. R., 231

BUNDI ROY v BUNJEE THAKOOR 21 W R, 64

10 ——— Suit by mutwalli for endowed property—Since the passing of Act XX of 1863 a mutwalli, or manager of a Mahomedan endowment cannot be considered to be an officer of

11. ——— Encroachment on public highway—Suit by Municipality to remove encroachment—Limitation Act art 142—Title by adverse possession—The Municipality of Mairas sued to recover as forming part of a highway a strip of

SARANGAPANI MUDALIAR I L R, 19 Mad, 154

——— art 151.

See DIVORCE ACT, s 55

[I L R., 23 Bom., 612

——— art 152.

See APPEAL—DECREE

[I L R., 23 Calc., 279, 408

LIMITATION ACT, 1877—continued.

14. — *Execution of process for enforcing the judgment Civil Procedure Code, s. 108.* Application to set aside a decree passed *ex parte*. The action of an auction appointed under s. 226 of the Code of Civil Procedure, in a partition suit to set aside the shares assigned to the respective parties to the suit is not the execution of a process for enforcing the judgment within the meaning of art. 165 of the Limitation Act, 1877. *Devi Nuth Mishra v. Harinda Nuth Mishra*, L. L. R., 22 Cal., 425, referred to. *MOHAMMAD KHAIR v. HAWWAN SINGH*

(I. L. R., 20 All., 311)

art. 165 (1871, art. 159).

1. — *Application for restitution by person dispossessed.* *Delay.*—In calculating the period of limitation prescribed in sch. II of Act IX of 1871 for applications as well as for suits and appeals, the day on which the order or decree appealed against was made should be excluded. Consequently, where a person having been dispossessed of property held by him under a mortgage on the 14th of December 1876 applied on the 14th January of 1877 for restitution, the 12th having been a Court Holiday, it was held that his application was within the limitation of thirty days prescribed by art. 165, sch. II of Act IX of 1871. *GURJAN S. BANERJEE*, I. L. R., 2 Bom., 673

2. — *Dispossession under sale in execution of decree.* *Summary order.*—A person purchased certain property at a sale in execution of a decree in November 1873; his purchase was confirmed and he obtained a certificate of sale on the 23rd May 1879, from which date he remained in possession. The judgment-debtor applied unsuccessfully to have the sale set aside for irregularity. He had applied, before the sale took place, to stay the sale on the ground that the right to apply for execution was barred. This application was dismissed, but was allowed on appeal. It did not appear that the auction-purchaser was a party to the proceeding, or that he was cognizant of the application. Two years from the date of the sale, and one and a half years from its confirmation, the judgment-debtor on a summary application obtained an order setting aside the sale and putting the auction-purchaser out of possession. Held that the order was erroneous, the Judge having no power, after the sale had been confirmed, to set aside the sale by a summary order, and that under art. 165 of Act XV of 1877 the application for such an order was barred. *MAHOMED HOSSAIN v. KOKIL SINGH*. I. L. R., 7 Cal., 91; 9 C. L. R., 53

3. — *Dispossession in execution.* *Application on behalf of a minor objecting to dispossession.*—Limitation Act, 1877, sch. II, art. 165, is applicable to a case where the applicant is a party to the decree which is being executed as well as when he is a stranger. But an application made on behalf of a minor objecting to dispossession more than thirty days after it took place is not barred by limitation by reason of Limitation Act, 1877, s. 7. *RATNAM AYYAR v. KRISHNA DOSS VITAI DOSS*

(I. L. R., 21 Mad., 494)

LIMITATION ACT, 1877—continued.

—art. 166 (1871, art. 159).

— *Execution—Sale in execution, the judgment-debtor being ignorant of the execution proceedings through the fraud of the decree-holder.*—*Setting aside proceedings in execution.*—Civil Procedure Code (XII of 1852), ss. 293, 311.—In 1879 D obtained a decree against S. S gave security for the satisfaction of the decree, whereupon D agreed not to take proceedings in execution. In breach of this agreement, D in the same year applied for execution and sold certain immoveable property belonging to S, of which K became the purchaser. K did not apply for possession until 1883, in which year he applied for and obtained possession of the property. S alleged that he then for the first time became aware of the sale, and that by the fraud of D and K he had been kept in ignorance of the execution proceedings taken by D in breach of the abovementioned agreement, and within thirty days after K obtained possession, he (S) applied for a reversal of the orders which had been passed in the aforesaid fraudulent proceedings. The Subordinate Judge held that the application was barred by art. 166 of sch. II of the Limitation Act (XV of 1877), and referred the applicant to a separate suit to set aside the sale. On application to the High Court,—Held also that art. 166 of sch. II of the Limitation Act (XV of 1877), did not apply. That article, as amended by s. 108 of Act XII of 1879, only applies to applications made under s. 311 or s. 294 of the Civil Procedure Code, seeking to set aside a sale on the ground of a material irregularity in publishing or conducting the sale, or on the ground that the decree-holder has purchased without the permission of the Court. *SAKHARAM GOVIND KALE v. DAMODAR AKHARAM*

(I. L. R., 9 Bom., 468)

—art. 167 (1871, art. 160).

1. — *Symbolical possession.*—A purchaser of immoveable property, sold in execution of a decree must, under Act XV of 1877, sch. II, art. 167, if obstructed or resisted in endeavouring to obtain possession, apply, within thirty days, to the Court under the directions of which the execution-sale was held, to be put into actual possession; and if he omits to do so within thirty days from the time when his taking possession was first obstructed or resisted, his only remedy is by a civil suit. The plaintiffs, on the 31st January 1863, purchased a half share in a certain house at a sale in execution of a decree, but took no steps at the time to take possession of it. In 1869 the Nazir of the Court was directed to put them into possession, and gave them symbolical possession. Afterwards, in 1871, the plaintiffs again, with the assistance of the Nazir, entered upon, and for the space of about a minute remained in possession of, one of the rooms in the house, until they were turned out by the defendants. On the 18th of November 1876, the plaintiffs filed a suit, praying for a declaration of right and for a partition, and to be put into separate possession of the share that might be allotted to them on such partition. Held that neither the symbolical possession given to them in 1869 by the Nazir nor the

LIMITATION ACT, 1877—continued

property of the defendant **SHIB CHUNDER BHADOOREE & LUCKNEE DEBIA CHOWDHRAIN**

[8 W R, M18, 51

Not process only against the person **BRUHM PARGASH & DUMBER LALL**

[1 N W, Ed 1873, 133

See **SOOKH MOYEE DOSSEE & NURMOODA DOSSEE**

[15 W R, 210

and **KALEE PRASAD & DIGAMBUR CHATTERJEE**

[25 W R, 72

6 ———— *Application for setting aside ex parte judgment after expiration of time limited*—A Judge has no jurisdiction to grant an application made by a defendant against whom an *ex parte* judgment has been passed to set aside the judgment after the expiration of the thirty days allowed by s 119 of the Code of Civil Procedure

Such an application is not allowed after the expiration of the thirty days after the judgment is pronounced against such defendant.

[18 Bom, A. C, 44

ANORAGEE KOOTER & ABDULLAH KHAN

[28 W R, 89

7 ———— *Application to set aside*

[20 W R, 20

LIMITATION ACT, 1877—continued

9 ———— *Execution of ex parte decree*—*Notice of execution*—Notice of execution of decree is not sufficient "process for enforcing" it within the meaning of art 157 sch II Act IX of 1871. Such process means actual process by attachment in execution of the person or property of the debtor. **POORNO CHUNDER COONDOO & PROSOVNO COOMAR SIKDAR**

[1 L R, 2 Calc, 123

10 ———— Where property had been

11 ———— *Ex parte judgment Application for an order to set aside*—Civil Procedure Code s 108—*Execution of process for enforcing the judgment*—An *ex parte* order was made against S to whom a certificate under Act XL of 1858 had been granted revoking such certificate, and granting it to A and directing S to deliver the

12 ———— *Code of Civil Procedure (Act X of 1877) s 108—Ex parte decree—Setting*

from the date of attaching the defendants' property

BHABUNESSURY BHABUNESSURY & JUDOBENDRA NARAIN MULLICK

[1 L R, 9 Calc, 863

13 ———— *Ex parte decree—Application to set aside ex parte decree—Presidency Small Cause Court Act (XV of 1882), s 37—S 37 of the Presidency Small Cause Courts Act (XV of 1882) does not apply to an ex parte decree. An application to set aside an ex parte decree passed by a Presidency Court of Small Causes falls within the terms of s 108 of the Code of Civil Procedure (XIV of 1859) and the period of limitation for such an application is thirty days as prescribed by art 164 of the Limitation Act. **ROSHANLAL & LACHMI NARAYAN***

[1 L R, 17 Bom, 507

making the order as to the application for reversal—*Held* that an application to the Appellate Court for reversal of an order discharging a rule nisi for the reversal of the order of dismissal and for the restoration of the suit to the board for hearing was barred. **IBRAHIM BIN MAHASIM & ABDUR RAHIM MAN BIN ALI GAMBER & ABDUR RAHMAN BIN ALI**

[12 Bom, 257

LIMITATION ACT, 1877—continued.

art. 170 (1871, art. 162).

and art. 178—*Application*

for leave to appeal in formā pauperis.—Plaintiffs filed a suit for partition, which was dismissed on the 9th December 1890. On the 17th March 1891, plaintiffs presented an appeal to the High Court on a Court-fee stamp of Rs. 10. On the 16th January 1892, the High Court held that the memorandum of appeal was insufficiently stamped, being chargeable with an *ad valorem* stamp on the value of the plaintiffs' share. On the 16th February 1892, plaintiffs applied for leave to appeal in formā pauperis. This application was granted *ex-parte*. At the hearing of the appeal, however, the respondent contended that the pauper appeal was time-barred. Held that the application for leave to appeal in formā pauperis, having been presented beyond the thirty days allowed by art. 170 of the Limitation Act (XV of 1877), was barred by limitation. The pauper appeal could not therefore be proceeded with. Art. 178 of the Limitation Act had no application to the present case. **MAHADEV BALYANT v. LAKSHMAN BALYANT** . I. L. R., 19 Bom., 48

arts. 171, 171A, and 171B.

See ABATEMENT OF SUIT—APPEALS.

[I. L. R., 7 All., 693, 734]

See ABATEMENT OF SUIT—SUITS.

[I. L. R., 5 Calc., 139; 4 C. L. R., 374]

1. — art. 171—*Death of appellant—Civil Procedure Code, 1877, ss. 365 and 587—Application for substitution of heir to allow execution to proceed.*—A suit was instituted and a decree obtained in the Court of first instance while Act VIII of 1859 was in force, but the second decree was made and the second or special appeal preferred after Act X of 1877 became law. Pending the hearing of such special appeal, on the 21st April 1878, the plaintiff, who was also appellant, died, and on the 16th August in the same year, or more than sixty days after his father's death, his son and sole heir applied to the Court to be substituted as appellant in place of the deceased, for the purpose of prosecuting the appeal. Held that the application was not made under s. 365, but under s. 587 of Act X of 1877, as incorporated with the former section, and was therefore not barred by art. 171, sch. II of Act XV of 1877. Where the language of an Act of Limitation specifies the particular cases for which a period of limitation is provided, the Court ought not to interpret that language so as to include cases not falling within the strict meaning of the words used. **IN THE MATTER OF RAM SUNKER BHADOORY** . 3 C. L. R., 440

2. — Abatement of suit—*Death of sole plaintiff after decree—Civil Procedure Code, 1877, ss. 365, 372.*—A sole plaintiff having died after decree, an application was made more than sixty days after his death by his legal representative for an order that his name might be substituted on the record for that of the original plaintiff, and that a sum of money, to which the original plaintiff, if alive, would have been entitled, might be paid to him, the legal representative. Held that s. 372 of the Civil Procedure Code did not apply to the case, that section

LIMITATION ACT, 1877—continued.

contemplating a proceeding before the determination of the suit; and further that the application was barred by Act XV of 1877, sch. II, art. 171. Held also that s. 232 had no application. S. 365 of the Civil Procedure Code (amended by Act XII of 1879, s. 61) does not apply to the case of a sole plaintiff dying after decree, the right to sue being merged in the decree. **CALLY CHURN MULLICK v. BHUGGODUTTY CHURN MULLICK** . 5 C. L. R., 108

3. — *Death of plaintiff and substitution of his representatives as party to suit.*—If a plaintiff dies after decree, his representatives are not bound to apply within sixty days to be made parties to the suit, but have the same time to file an appeal as the plaintiff would have had. The Civil Procedure Code, ss. 363, 365, and the Limitation Act, sch. II, art. 171, do not apply to the case of a plaintiff dying after decree. **RAMANADA SASTRI v. MINATCHI AMMAL** . I. L. R., 3 Mad., 236

4. — *Civil Procedure Code, 1877, ss. 363, 365—Abatement of execution proceedings—Representative.*—The provision of the Limitation Act (XV of 1877), sch. II, art. 171, which gives a period of sixty days to a person claiming to be the legal representative of a deceased plaintiff under s. 363 or 365 of the Code of Civil Procedure, does not apply to the representative of a deceased judgment-creditor claiming admission to continue execution-proceedings commenced by him. Such a representative may come in at any time, subject always to the same conditions as would have applied to the plaintiff himself. **GULABDAS v. LAKSHMAN NARHAR**

[I. L. R., 3 Bom., 221]

5. — and art. 171B—*Act XIII of 1879, ss. 60 and 108—Deceased defendant—Application to make legal representative defendant.*—Subsequently to the institution of the plaintiffs' suit, one of the defendants died, and his son, as his legal representative, was made a defendant in his stead. The new defendant objected (*inter alia*) that his father had been dead more than six months before the application of the plaintiffs to make him a defendant, and that therefore the suit should abate as provided by the last clause of s. 368 of the Civil Procedure Code, Act X of 1877 (introduced by the amending Act XII of 1879), and art. 171B of the Limitation Act XV of 1877, which prescribes a period of sixty days within which an application should be made to have the representative of a deceased defendant made a defendant to a suit. When the amending Act XII of 1879 was passed, that is, on the 29th of July 1879,—the original defendant had been dead more than six months; but the plaintiff made an application to have the representative of the deceased defendant made a defendant before the publication of the Act in the local Gazette. Held that the provisions of art. 171B of the Limitation Act should not have retrospective effect, and that the plaintiffs' application was not time-barred. **KHUSALBHAI v. KARBHAI** . I. L. R., 6 Bom., 26

6. — *Civil Procedure Code (Act XIV of 1882), ss. 3, 368, 582—Respondent, Death of—Practice—Substitution of parties.*—Having

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momentary and partial possession which they had obtained in 1871 was sufficient to save limitation, and that

member

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NATH MOOKERJEE : ORHOY NUND ROY

[I L R., 5 Cal., 331]

2. ————— Warrant for possession—

again made in January 1881.—Held that a complaint by the decree holders as to the second obstruction, made within thirty days of the second obstruction, was not barred by reason of art 167 of sch II of the Limitation Act. **RAMASEKARA PILLAI v DHARMARAYA GOUNDAN** I. L R., 5 Mad., 113

3. ————— Civil Procedure Code, 1882

33 318 334—Petition by purchaser at Court sale of property—Held that the sale was void of decree—

for delivery of possession of the property purchased it appeared that the sale took place in 1885 that it was confirmed in 1886, and that in January 1887 an order was made for delivery of possession to the purchaser. The judgment debtor had resisted the purchaser's efforts to obtain possession in 1887, and set up in bar of the application in 1888 an oral agreement alleged to have been made between him and the purchaser. The application was rejected. Held that the application not being a complaint of obstruction, was not barred by limitation, and should be heard and determined on the merits. **MUTIA v APPASAMI**

[I L R., 13 Mad., 504]

4. ————— Minor—Purchase on behalf

property was purchased on behalf of the applicant, who was then a minor, by the agent nominated by his guardian. An order for delivery of possession was made, but a third party having obstructed, the order was returned unexecuted. No further proceedings were taken by the agent. The applicant, having come of age, applied for delivery of possession within three years from the date of his attaining majority, but more than thirty days after the date of the obstruction and more than thirty days after he came of age. The

LIMITATION ACT, 1877—continued

Subordinate Judge rejected the application as barred, being of opinion that the omission to apply, within thirty days from the date of the obstruction, on the part of the applicant's agent, as well as the applicant's omission to do so within a similar period after he came of age barred the applicant whose remedy lay in a fresh suit. Held by the High Court that the application was rightly rejected. It was virtually an attempt to renew the old proceedings and was barred by art 167 of sch II of the Limitation Act. If the applicant intended to proceed summarily under the Civil Procedure Code he should have taken proceedings within a month after he came of age. **VINAYAKRAY AMRIT v DEVEAY GOVIND** I L R., 11 Bom., 473

art 168 (1871), art 161, Civil Procedure Code, 1859, s 347)

1. ————— Time for appeal—Civil Procedure Code, 1859, s 347—To bring an appellant within the terms of s 347 of the Code of

In such an application the Judge is bound to see whether the reasons set forth for re-admission are satisfactory or not. **SHOMAZD ALI SOWDAGUR v EUSCOF KHAN CHOWDHRY** 15 W R., 80

2. ————— Application for re-admission of appeal—The time allowed by s 347 of Act VIII of 1859 within which to apply for the re-admission of an appeal dismissed for default of prosecution should not where the appellant's pleader has died without his hearing of it be counted as

3. ————— Application for re-admission of appeal dismissed on failure to deposit costs of paper book—High Court Rules Part II, Ch VIII, Rule 17—Civil Procedure Code (1882),

application was not one under s 553 of the Civil Procedure Code, that it was not barred under art 163 of the Limitation Act, that it was an application under the Rules of the Court, and that the law of limitation did not apply to such an application. **RAMHARI SANKU v MADAN MOHAN MITTER**

[I L R., 23 Cal., 389]

See **FATIMUNNISSA v DEOKI PERSHAD**

[I L R., 24 Cal., 350]

IMDAL HOSSAIN v DEOKI PERSHAD

[I C. W. N., 21]

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plaintiff-respondent made a respondent. Art. 178 applies to such applications. So held by the Full Bench, MAHMOOD, J., dissenting. Held by MAHMOOD, J., that by reason of s. 3 (read with ss. 368 and 582) of the Civil Procedure Code, the word "defendant" in art. 171B of the Limitation Act necessarily includes a plaintiff-respondent. *Soshi Bhusan Chand v. Grish Chunder Taluqdar, I. L. R., 11 Cal., 694*, referred to. CHAJMAL DAS v. JAGDAMBA PRASAD. I. L. R., 10 All., 280

15. ——— *Application by representative of judgment-creditor to continue execution of decree.*—The provision of the Limitation Act (XV of 1877), sch. II, art. 171, which gives a period of sixty days to a person claiming to be the legal representative of a deceased plaintiff under s. 363 or 365 of the Code of Civil Procedure, does not apply to the representative of a deceased judgment-creditor claiming admission to continue execution proceedings commenced by him. The Code of Civil Procedure (Act X) of 1877 does not provide that applications for execution shall, like suits, abate by the death of the judgment-creditor; such representative may therefore come in at any time, as his coming in is contemplated in art. 179, explanation I of sch. II of the Limitation Act, subject always to the same conditions as would apply to his principal. *GOLABDAS v. LAKSHMAN NARHAR*. I. L. R., 3 Bom., 221

art. 173 (1871, art. 164).

1. ——— *Mofussil Small Cause Courts Act, XI of 1865, s. 21—New trial—Review.*—Where the circumstances of a case in a mofussil Small Cause Court admit a new trial, an application for such new trial is governed by s. 21 of Act XI of 1865, which is still in force notwithstanding the right of review given by s. 623 of the Civil Procedure Code. But where the circumstances of a case do not admit of a new trial, but do admit of a review, then the time within which an application for review should be made is to be governed by art. 173, sch. II of Act XV of 1877. *MADON MOHON PODDAR v. PURNO CHANDRA PURBOT*

[I. L. R., 10 Cal., 297]

2. ——— *Amendment of decree by orders in execution.*—Where the first Court's decree in favour of the plaintiff was upheld in appeal, but in the course of the execution proceedings the lower Appellate Court held that its judgment did not mean to uphold that decree in its entirety, it was held that this order was in the nature of an amendment of the decree, and that the ninety days allowed for an application for review should count from the date of such order. *BULOBUDDUR MAHANTEE v. MUDHOOSODUN PANDEY*. 23 W. R., 433

art. 175.

See DECREE—ALTERATION OR AMENDMENT OF DECREE.

[I. L. R., 14 Cal., 348]

See LIMITATION ACT, 1877, ART. 179—ORDER FOR PAYMENT AT SPECIFIED DATES. I. L. R., 14 Cal., 348

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art. 175A.

See ABATEMENT OF SUIT—APPEALS.

[I. L. R., 23 Mad., 125]

art. 175C.

See ABATEMENT OF SUIT—APPEALS.

[I. L. R., 11 All., 408]

See PARTIES—SUBSTITUTION OF PARTIES—RESPONDENT.

[I. L. R., 11 All., 408]

and art. 178—*Substitution of the heirs of deceased defendant—Civil Procedure Code, 1889, ss. 368, 372—Substitution of parties.*—After the institution of a suit for dissolution of a partnership, two of the defendants died. More than a year after their death, the plaintiffs applied to have the legal representatives of the deceased entered on the record. The Subordinate Judge granted this application, holding that the case was governed by s. 372 of the Code of Civil Procedure (Act XIV of 1882), and that the application was therefore within time under art. 175 of the Limitation Act (XV of 1877). Held that the case was governed by s. 368, and not s. 372, of the Civil Procedure Code. The application for substitution of the heirs of the deceased defendants ought to have been made within six months, as provided by art. 175C of the Limitation Act and was barred unless the delay was sufficiently explained. *JAMNADAS CHHABILDAS v. SORABJI KHAREDDJI*

[I. L. R., 16 Bom., 27]

art. 176 (1871, art. 165)—*Application—Filing award by arbitrators—Civil Procedure Code, 1877, s. 516.*—The act of an arbitrator, in handing in an award to the proper officer of the Court for the purpose of the award being filed, cannot be considered as an "application" within the meaning of the Limitation Act. *ROBERTS v. HARRISON*

[I. L. R., 7 Cal., 333; 9 C. L. R., 209]

1. ——— art. 177—*Civil Procedure Code, s. 598—Application for certificate for appeal to Privy Council.*—In computing the period of limitation for an application for a certificate admitting an appeal to Her Majesty in Council, the time occupied in obtaining copies of the decree and judgment sought to be appealed against cannot be excluded, s. 12 not being applicable. *ANDERSON v. PERIASAMI*

[I. L. R., 15 Mad., 169]

2. ——— *Civil Procedure Code, s. 599—General Clauses Act (I of 1868), s. 3, cl. (1)—Civil Procedure Code Amendment Act (VII of 1888), s. 57—Application for leave to appeal to Her Majesty in Council.*—S. 599 of Act No. XIV of 1882 is not inconsistent with art. 177 of sch. II of Act XV of 1877 as read in conjunction with the provisions contained in the sections of that Act which are applicable to art. 177. The limitation therefore for an application for leave to appeal to Her Majesty in Council is six months from the date of the decree to appeal from which leave is sought. The provisions of the second paragraph of s. 5 of Act XV of 1877 do not extend to applications for

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**MATTER OF THE PETITION OF SOSHI BHUSAN CHAND
SOSHI BHUSAN CHAND v GRISH CHUNDER TALUK-
DAR** I L R, 11 Calc, 694

7 ———— and arts 171A, 171B—
*Civil Procedure Code (Act XIV of 1882) s 582—
Respondent Deceased of, after appeal filed—Defen-
dant—Held by the Full Bench the word 'defen-
dant' in art 171B of the Limitation Act does not
include a respondent S 582 of Act XIV of 1882
affects only proceedings under the Code, and does not
extend the operation of any portion of the Limitation
Act* **UDIT NARAIN SINGH v HAROGOURI PROSAD**
[I L R, 12 Calc, 590]

8 ———— and art 171B—*Applica-
tion to sue in forma pauperis—Death of opponent*

the suit **JANARDAN VITHAL v ANANT MAHADEV**
[I L R, 7 Bom., 373]

9 ———— *Appeal Abatement of—*

of a defendant **Narain Das v Lajja Ram**, I L
R, 7 All., 693, in which MAHMOOD, J, differed from

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the decision of the Full Bench distinguished **RAM-
NISHAR SINGH v BISHESHAR SINGH**

[I L R, 7 All., 734]

10 ———— and art 171B—*Per*

Limitation Act, 1871 **LAKSHMI v SRI DEVI**

[I L R, 9 Mad., 1]

11. ———— *Civil Procedure Code (XIV
of 1882) ss 368, 582—Deceased of respondent after
appeal filed—The word defendant in art 171B
of sch II of the Limitation Act (XV of 1877)
does not include respondent* **BALKRISHNA GOPAL
v BAL JOSHI SADASHIV JOSHI**

[I L R, 10 Bom., 663]

12 ———— art 171B—*Appeal—Death of de-*

ceased a respondent **BALDEO v BISMILLAH BEGAM**

[I L R, 9 All., 118]

13 ———— *Death of defendant res-*

pon-
ent Act does not apply to the death of a respon-

dent's death to have the representative of a deceased
made a respondent is barred by limitation, and
the appeal is liable to abatement **Soshi Bhusan
Chand v Grish Chunder Talukdar**, I L R,
11 Calc., 694, referred to **DEBI DIN v CHUNNA
LAL** I L R, 10 All., 264

14. ———— and art 178—*Death of
plaintiff respondent—Application by defendants-
appellants for substitution of legal representative*

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plaintiff-respondent made a respondent. Art. 178 applies to such applications. So held by the Full Bench. *MAHMOOD, J.*, dissenting. *Held* by *MAHMOOD, J.*, that by reason of s. 3 (read with ss. 363 and 362) of the Civil Procedure Code, the word "defendant" in art. 171B of the Limitation Act necessarily includes a plaintiff-respondent. *Soshi Bhusan Chand v. Grish Chunder Talugdar, I. L. R., 11 Cal., 694*, referred to. *CHAJMAL DAS v. JAGDAMBA PRASAD*. **I. L. R., 10 All., 260**

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art. 175.

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[I. L. R., 14 Calc., 346]

See LIMITATION ACT, 1877, ART. 179—ORDER FOR PAYMENT AT SPECIFIED DATES. **I. L. R., 14 Calc., 348**

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art. 175A.

See ABATEMENT OF SUIT—APPEALS.

[I. L. R., 23 Mad., 125]

art. 175C.

See ABATEMENT OF SUIT—APPEALS.

[I. L. R., 11 All., 408]

See PARTIES—SUBSTITUTION OF PARTIES—RESPONDENT.

[I. L. R., 11 All., 408]

and art. 178—*Substitution of the heirs of deceased defendant—Civil Procedure Code, 1889, ss. 368, 372—Substitution of parties.*—After the institution of a suit for dissolution of a partnership, two of the defendants died. More than a year after their death, the plaintiffs applied to have the legal representatives of the deceased entered on the record. The Subordinate Judge granted this application, holding that the case was governed by s. 372 of the Code of Civil Procedure (Act XIV of 1882), and that the application was therefore within time under art. 175 of the Limitation Act (XV of 1877). *Held* that the case was governed by s. 368, and not s. 372, of the Civil Procedure Code. The application for substitution of the heirs of the deceased defendants ought to have been made within six months, as provided by art. 175C of the Limitation Act and was barred unless the delay was sufficiently explained. *JAMNADAS CHHABILDAS v. SORABJI KHARSEDJI*

[I. L. R., 18 Bom., 27]

art. 176 (1871, art. 165)—*Application—Filing award by arbitrators—Civil Procedure Code, 1877, s. 516.*—The act of an arbitrator, in handing in an award to the proper officer of the Court for the purpose of the award being filed, cannot be considered as an "application" within the meaning of the Limitation Act. *ROBERTS v. HARRISON*

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1. — art. 177—*Civil Procedure Code, s. 598—Application for certificate for appeal to Privy Council.*—In computing the period of limitation for an application for a certificate admitting an appeal to Her Majesty in Council, the time occupied in obtaining copies of the decree and judgment sought to be appealed against cannot be excluded, s. 12 not being applicable. *ANDERSON v. PERIASAMI*

[I. L. R., 15 Mad., 169]

2. — *Civil Procedure Code, s. 599—General Clauses Act (I of 1868), s. 3, cl. (1)—Civil Procedure Code Amendment Act (VII of 1888), s. 57—Application for leave to appeal to Her Majesty in Council.*—S. 599 of Act No. XIV of 1882 is not inconsistent with art. 177 of sch. II of Act XV of 1877 as read in conjunction with the provisions contained in the sections of that Act which are applicable to art. 177. The limitation therefore for an application for leave to appeal to Her Majesty in Council is six months from the date of the decree to appeal from which leave is sought. The provisions of the second paragraph of s. 5 of Act XV of 1877 do not extend to applications for

LIMITATION ACT, 1877—continued

leave to appeal to Her Majesty in Council *Fazal-
un nissa Begum v Mulo, I L R 6 All. 250,*

3 ——— Civil Procedure Code

Court of Wards was a party Having attained his

4 ——— and s 12—Application for leave to appeal to Privy Council—Time requisite for obtaining copy of judgment—*Held (per STUART, C J, SPARKIE J. dissenting) that, in computing the period of limitation prescribed by art 177,*

e. NARAIN DAS I L R, 1 All. 644

5. ——— Application for leave to appeal to Privy Council—Time for presentation of application—*Limitation Act (XV of 1877), ss 5 and 12—Civil Procedure Code (1882), s 598.*—An application for leave to appeal to the Privy Council must be made within six months from the date of decree. Such an application is not an appeal, and in computing the period of limitation the time required for obtaining a copy of the decree cannot be excluded. *MORORA RAMCHANDRA v GHANASHAM NILKANT NADKARNI I L R, 19 Bom., 301*

art 178

Applications to enforce a "summary decision" were provided for in s 22 of Act XIV of 1859 and this was continued in art 166 of Act IX of 1871 the period of limitation being one year. The provision was omitted in the present Act, but this article (178) including "applications for which no period of limitation is provided elsewhere in the schedule" has been inserted. Applications formerly coming under s 22 of the Act of 1859 and art 166 of the Act of 1871, if not otherwise expressly provided for would presumably therefore now come under art 178.

1 ——— Act XIV of 1859 s 22—*(cis on " cis on of regular of 1859*

LIMITATION ACT, 1877—continued.

the period for enforcement of such decision was one year from the time it was passed. *RAMDHAN MAN DAL v RAMESWAR BHATTACHARJEE*

[3 B L R, A C, 235 11 W R, 117

2 ——— Act XIV of 1859, s 22—*Decree under Act XIV of 1851—Summary order—*A decree passed under Act XIX of 1841 on a claim to a certain share of property by right of succession was a summary order, and therefore subject to the limitation of one year provided by s 22 Act XIV of 1859. *MAZEDOONISSA BEBEE v FUGZUN BEBEE*

[4 W R, Mis, 6

3 ——— Summary decision under *Beng Reg VII of 1799*—To a process of execution to enforce a summary decision on of the revenue authorities under Regulation VII of 1799, Act XIV of 1859 is held applicable and no proceeding in execution having been taken out to enforce such decision or to keep the same in force within one year next preceding the application for such execution it was held barred by limitation. *LUCHMER KANT GHOSH v RAMUN DASS MOOKERJEE* 17 W R, 472

4 ——— Act XIV of 1859, s 22—*Summary decision—Semble—*An order under s 246

5 ——— Act XIV of 1859, s 22—*Summary decision—*An order awarding possession under s. 15 Act XIV of 1859, was a summary award to which the provisions of s 22 were applicable. A summary decision is not a final one on the matter at issue between the parties. *IN THE MATTER OF NUBOO KISHEN MOOKERJEE* 11 W R, 188

6 ——— Act XIV of 1859 s 22—*Order for costs in execution of decree—*An order for costs made as a contested matter in execution of a decree was not a "summary decision or award" within s 22 Act XIV of 1859, but an "order" under s 20. *Puresh Narain Roy v Dalrymple, 9 W R, 468* followed. *MOHAN LALL SURUL v ULFUTUNNISA*

[5 B L R, 164 note. 11 W R, 98

7. ——— Act XIV of 1859 s 22—*Order dismissing application for execution—*An order of a Court dismissing an application for execution of a decree, on the ground that it was barred by the Law of Limitation was not a "summary decision" within the meaning of s 22. It was an order within the meaning of s 20 of that Act. *DHIRAJ MAHTAB CHAND BARADOOR v BACHA RAM HAZRA*

[5 B L R, 162, 13 W R, F B, 74

8 ——— Act XIV of 1859 s 22—*Summary order—*A judgment creditor having in execution taken possession of lands in excess of his

LIMITATION ACT, 1877—continued.

order was not a summary one within the meaning of s. 22, and that an application for its execution was governed by the three years' limitation. **ROOP MUNGUL SINGH v. CHOORAMUN SINGH**

[16 W. R., 182]

9. — *Act XIV of 1858, s. 22—Decree under Registration Act, 1866, s. 53.—Quære*—Whether a decree passed under s. 53 of the Registration Act was or was not a summary decree within the meaning of Act XIV of 1859, s. 22. **HURNATH CHATTERJEE v. FUTTIK CHUNDER SUMADAR**

[18 W. R., 512]

10. — *Act IX of 1871, art. 166—Application for execution of decree—Registration Act, 1866, s. 53.*—An application for the execution of a decree made under s. 53 of Act XX of 1866 fell within art. 166, and not within art. 167, sch. II of Act IX of 1871. **Jai Shankar v. Tetley, I. L. R., 1 All., 586**, dissented from. A proceeding under s. 53 of Act XX of 1866, though in the nature of a suit, was not a regular suit, and a decree made in such a proceeding was a decision of a Civil Court other than a decree passed in a regular suit. On the 13th July 1872 the appellant obtained a decree, under s. 53, Act XX of 1866, on a bond specially registered under s. 52 of that Act. He applied for the execution of it,—first on the 2nd September 1872 and again on the 18th August 1875. The Court made an order on the 15th November 1875, dismissing the proceedings on his second application for execution. The decree not being fully satisfied, he again applied for its execution on the 11th September 1878. Held that the application of the 11th September 1878 was barred both under s. 22 of Act XIV of 1869 and art. 166 of sch. II of Act IX of 1871, no proceedings having been taken to enforce the summary decree within one year next preceding the said application. **BIKRAMBHAT v. FERNANDEZ**

I. L. R., 5 Bom., 672

See contra, **JAI SHANKAR v. TETLEY**

[I. L. R., 1 All., 586]

11. — *Act XIV of 1859, s. 22—Registration Act (XX of 1866), s. 53—"Decree" made upon a registered obligation—Summary decision.*—A summary decision means a decision arrived at by a summary proceeding, and a "decree" made under s. 53 of Act XX of 1876 was a summary decision. S. 20 of Act XIV of 1859 was intended to apply to decisions, whether called judgments, decrees, or orders, made in a regular suit; and s. 22 of the same Act was intended to apply to all other decisions. A decree made in 1867 under s. 53 of Act XX of 1866 held to be subject, as regards its execution, to the law of limitation provided in Act XIV of 1859, s. 22. **MINA KONWARI v. JUGGAT SETANI**

[I. L. R., 10 Calc., 198; 13 C. L. R., 385]

L. R., 10 I. A., 119

12. — *Application to pass judgment in terms of an award—Civil Procedure Code, 1859, s. 327; 1877, s. 526.*—At the request of the applicants, the lower Court filed an award on the 20th December 1866, but no judgment was passed in terms of it. Several applications for execution of

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the award were subsequently made and granted. The last application was made in 1880, and was rejected on the ground that there was no decree to execute. The order was confirmed by the High Court on appeal. The applicants then applied to the lower Court to pass judgment in terms of the award. The Court rejected the application as barred under the Limitation Act, XV of 1877, sch. II, art. 178. The applicants appealed. Held by **SARGENT, C.J.**, and **KEMBALL, J.**, that, looking to the provisions of the Codes of Civil Procedure of 1859 and 1877 with respect to the filing of awards in Court and the proceedings thereon, it appeared to be the duty of the Court, under both Codes, to proceed to pass judgment according to the award as soon as it was ordered to be filed, without waiting for any application that should be done, though such application was, as a matter of practice, usual; and that being so, such an application was one which, under the authority of **Kylasa Goundan v. Ramasami Ayyan, I. L. R., 4 Mad., 172**, and **Vithal Janardan v. Vithojirav Putlajirav, I. L. R., 6 Bom., 536**, was not within the contemplation of the Limitation Act. Held further that the same effect should be given to the language of s. 327 of Act VIII of 1859 and s. 526 of Act X of 1877. The expression "may be enforced" in the concluding part of s. 327 ought to be read as "shall be enforced" as far as it applies to the Court, although the enforcement by execution of the decree must always, of course, be permissive, as regards the plaintiff. **ISHWARDAS JAGJIVANDAS v. DOSIBAI**

[I. L. R., 7 Bom., 316]

13. — *Application for certificate to collect debts of deceased person.*—Art. 178 of sch. II of the Limitation Act, 1877, does not affect an application under Act XXVII of 1860 for a certificate to collect debts due to the estate of a deceased person. **JANAKI v. KESAYALU**

[I. L. R., 8 Mad., 207]

14. — *Application for probate.*—The Limitation Act is not applicable to an application for probate; such an application therefore is not barred by art. 178 of sch. II of that Act. **IN THE MATTER OF THE PETITION OF ISHAN CHUNDER ROY** I. L. R., 6 Calc., 707; 8 C. L. R., 52

15. — *Application for probate or letters or certificate of administration.*—Art. 178 of sch. II of Act XV of 1877 has reference only to applications under the Civil Procedure Code (Act X of 1877), and does not apply to applications for probate or letters or certificates of administration. **BAI MANDEKAI v. MANEKJI KATASJI**

[I. L. R., 7 Bom., 213]

16. — *Applications for probate or letters or certificates of administration.*—Applications for probate or letters or certificates of administration do not fall within the provisions of art. 178 of the Limitation Act. **KASHI CHUNDRA DEB v. GORI KRISHNA DEB** I. L. R., 19 Calc., 48

17. — *Applications for probate.*—The Limitation Act does not apply to applications for probate, and the applications referred to in art. 178 of sch. II of that Act are applications

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leave to appeal to Her Majesty in Council *Fazal-un-nissa Begam v. Afulo*, I L R, 6 All, 250,

3 ————— Civil Procedure Code

4 ————— and s 12—Application

request for obtaining a copy of the judgment on which the decree against which leave to appeal is sought is founded cannot be excluded under the provisions of s 12 of Act XV of 1877 *JAWAHIR LAL v. NARAIN DAS* I L R, 1 All, 644

5. ————— Application for leave to appeal to Privy Council—Time for presentation of application—Limitation Act (XV of 1877), ss 5 and 12—Civil Procedure Code (1882), s 598—An application for leave to appeal to the Privy

art 178

Applications to enforce a "summary decision" were provided for in s 22 of Act XIV of 1859 and this was continued in art 166 of Act IX of 1871, the period of limitation being one year. The provision was omitted in the present Act, but this article (178) including "applications for which no period of limitation is provided elsewhere in the schedule" has been inserted. Applications formerly coming under s 22 of the Act of 1859, and art. 166 of the Act of 1871, if not otherwise expressly provided for would presumably therefore now come under art. 178.

1. ————— Act XIV of 1859 s 22—Summary decision.—The words "summary decision" as used in s 22, Act XIV of 1859 meant a decision of the Civil Court not being a decree made in a regular suit or appeal. Under s 22 Act XIV of 1859,

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the period for enforcement of such decision was one year from the time it was passed. *RAMDHAN MAN DAL v. RAMESWAR BHATTACHARJEE*

[2 B L R, A C, 235. 11 W R, 117]

2 ————— Act XIV of 1859 s 22—Decree under Act XIX of 1841—Summary order—

1:59 *MAKDOONISSA BEEBE v. FURZUF BEEBE* [4 W R, MIB, 6]

3 ————— Summary decision under Beng. Reg VII of 1799—To a process of execution

ceding the application for such execution it was held barred by limitation. *LUCMER KANT GHOSH v. BANUN DASS MOOKERJEE* 17 W R, 472

4 ————— Act XIV of 1859, s 22—Summary decision—*Semble*—An order under s 246 of the Civil Procedure Code was a summary decision within the meaning of s 22 of the Limitation Act. *MANCHARAM KALLIANDAS v. RATILAL LALSHANKAR* [6 Bom, A. C, 39]

5. ————— Act XIV of 1859, s 22—Summary decision—An order awarding possession under s 15, Act XIV of 1859, was a summary award to which the provisions of s 22 were applicable. A summary decision is not a final one on the matter at issue between the parties. *IN THE MATTER OF NUBOO KISHEN MOOKERJEE* 11 W R, 188

6 ————— Act XIV of 1859, s 22—Order for costs in execution of decree—An order for costs in execution of a decree with unde-
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[5 B L R, 164 note 11 W R, 98.]

7. ————— Act XIV of 1859 s 22—Order dismissing application for execution—An order of a Court dismissing an application for execution of a decree, on the ground that it was barred by the Law of Limitation, was not a "summary decision" within the meaning of s 22. It was an order within the meaning of s 20 of that Act. *DEHRAJ MAHYAN CHAND BAHADOOR v. BICHARAM HAZRA*

[5 B L R, 162, 13 W. R. F. R. 74]

8 ————— Act, XIV of 1859 s 22—Summary order—A judgment-cred. or having in

land being confirmed in appeal. And that the

LIMITATION ACT, 1877—continued.

under s. 206 of the Civil Procedure Code for amendment of a decree, was to bring it into conformity with the judgment, it being the bounden duty of a Court, of its own motion, to see that its decrees are in accordance with the judgments, and to correct them if necessary. *Gara Prasad v. Sakri Prasad*, I. L. R., 4 All., 23, disented from. *In re petition of Kishan Singh*, Weekly Notes, All., 1883, p. 262; *Kishan Girdan v. Ramasari Aggar*, I. L. R., 4 Mad., 172; and *Pithal Jannardan v. Pithapir*, *Pattajirav I. L. R.*, 6 Bom., 556, referred to. **DABO R. KISHO RAI** . . . I. L. R., 9 All., 364

30. ———— *Amendment of decree—Civil Procedure Code, 1852, s. 206—Suit for mesne profits & title plaintiff is out of possession.*—There is no limitation for an application under s. 206 of the Civil Procedure Code to amend a decree, it being the duty of the Court to amend it whenever it is found to be not in conformity with the judgment. A instituted a suit for declaration of title and for possession. The decree, which was finally confirmed by the High Court, gave her the declaration sought for, but it contained no direction as to the possession, although the judgment stated that she was entitled to possession. A's son (having been substituted in her place) applied to have the decree amended. The lower Appellate Court held that the application was barred by limitation. The High Court on appeal upheld the lower Court's order not on the ground of limitation, but on the ground that the application to amend the decree had been made in the wrong Court. A's son then instituted a fresh suit against the same parties for declaration of title, perpetual injunction, and for mesne profits. *Held* that the plaintiff was entitled to have the decree amended under s. 206, Civil Procedure Code, and that, though the plaintiff's claim to possession was barred, yet his right was not extinguished, and he, having therefore a subsisting title, was entitled, though out of possession, to maintain the suit so far as it sought to recover mesne profits. **KALU R. LATU** . . . I. L. R., 21 Cal., 259

31. ———— *Decree as originally framed incapable of execution—Amendment of decree—Application for execution of amended decree.*—Where a decree as originally framed was found by the High Court to be incapable of execution, and was not finally amended by that Court, so as to become capable of execution, until nearly twelve years after it was passed, it was *held* that an application to execute such decree which was made within three years from the date of the amendment of the decree was within time, the rule of limitation applicable being that prescribed by art. 178 of sch. II of Act XV of 1877. **MUHAMMAD SULEMAN KHAN R. MUHAMMAD YAR KHAN** . . . I. L. R., 17 All., 39

32. ———— *Application for order absolute for sale of mortgaged property—Transfer of Property Act (IV of 1882), s. 89.*—Art. 178 of sch. II of the Limitation Act, 1877, does not apply to an application for an order absolute for the sale of mortgaged property under s. 89 of the Transfer of Property Act, 1882. *Bai Manekbai v. Manekji Karasji*, I. L. R., 7 Bom., 213, approved. **RANBIR SINGH R. DRIGPAL** . . . I. L. R., 16 All., 23

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Contra, **CHUNNI LAL R. HARNAM DASS**

I. L. R., 20 All., 302

33. ———— *Transfer of Property Act (IV of 1882), s. 89—Application for an order absolute for sale of mortgaged property.*—An application under s. 89 of the Transfer of Property Act (IV of 1882) to have a mortgage-decree for sale made absolute is not governed by art. 178, sch. II of the Limitation Act, 1877. That article is limited to applications under the Code of Civil Procedure. *Bai Manekbai v. Manekji Karasji*, I. L. R., 7 Bom., 213, and *Ranbir Singh v. Drigpal*, I. L. R., 16 All., 23, approved. In dealing, however, with such an application, the Court may be guided by considerations as to whether any delay on the part of the mortgagee has not been unreasonable, so as to bring it within the rules applied in such cases by Courts of equity. So long as the final order for sale is not passed, the suit may properly be regarded as pending. **TILUCK SINGH R. PARSOTTI PROSHAD** . I. L. R., 22 Cal., 924

34. ———— *Application for a decree under s. 90—Transfer of Property Act (IV of 1882).*—*Held* that the limitation governing an application for a decree under s. 90 of the Transfer of Property Act is that prescribed by art. 178 of the second schedule to the Limitation Act, 1877. **RAM SAGUR R. GHATANI** . . . I. L. R., 21 All., 453

35. ———— *Application for resale in execution of decree—Continuous proceedings.*—Upon an application made on the 28th August 1891, for execution of a mortgage decree, the mortgaged property was sold, and the judgment-debtors purchased it benami at a low price. Thereupon the decree-holders made an application, on the 12th November 1891, asking the Court to set aside the benami purchase and resell the property. The first Court found that the purchase was not benami, and confirmed the sale on the 12th April 1892, but the lower Appellate Court came to a contrary conclusion, and set aside the sale on the 22nd July 1892. The High Court, in second appeal, accepted the finding of the Appellate Court as regards the purchase being benami, but upheld the sale with the remark that the said property and any other property of the debtors might be sold in satisfaction of the mortgage-debt. This judgment was passed on the 4th August 1893. On an application for execution made on the 3rd December 1894, an objection was raised on the ground of limitation. *Held* that the application of the 3rd December 1894 might be regarded as a continuation of the application of the 12th November 1891, for resale of the property; and as the decree-holders were precluded by the first Court's finding of the 12th April 1892, from asking for sale until it was reversed by the lower Appellate Court on the 22nd July 1892, and finally by the High Court on the 4th August 1893, the application was in time under art. 178, sch. II, Act XV of 1877. **Pyaroo Tukovil-darinee v. Nazir Hossein**, 23 W. R., 153; *Chandra Prodhan v. Gopi Mohon Shaha*, I. L. R., 14 Cal., 385; *Paras Ram v. Gardner*, I. L. R., 1 All., 355; *Kalyanbhai Dipchand v. Ghanasham*, *Lal Jadunathji*, I. L. R., 5 Bom., 29; and *Chintamon*.

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under the Code of Civil Procedure. *Janaki v. Kesaralu*, I. L. R., 8 Mad., 207, *Bai Manohbai v. Manekji Kavaji*, I. L. R., 7 Bom., 213, and in the matter of the petition of *Ishan Chunder Roy*, I. L. R., 6 Cal., 707, followed *GHANAMUTHU UPADESI v. VANA KOILPILLAI NADAN*

— [I. L. R., 17 Mad., 379]

18. — Application for certificate of sale—*Civil Procedure Code*, 1859, s. 259—The provisions of the Limitation Act relating to applica-

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DEVIDAS JAGJIVAN v. PORJADA BEGAM

[I. L. R., 8 Bom., 377]

20. — Certificate of sale, Application for.—Where an application for a certificate of sale was made five years and a half after the confirmation of the sale.—Held that it was barred by art. 178 of sch. II of Act XV of 1877. *TUKARAM v. SATVAJI KHANDAJI*. I. L. R., 5 Bom., 208

21. — Application for a certificate of sale—Accrual of cause of action—The applicant purchased certain land at a Court-sale on the 17th February 1878. The sale was confirmed on the 20th March of the same year. The purchaser did not apply for a certificate of sale until the 10th March 1880. Held that the application was barred

22. — Civil Procedure Code (Act XIV of 1859), s. 318—Purchaser at Court-sale—

DOMING ZURAN . I. L. R., 11 Bom., 228

23. — Application for possession—

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limitation therefore counts from the former date. *BASAPA v. MARYA* . I. L. R., 3 Bom., 433

24. — Application for possession by purchaser at a Court sale—*Civil Procedure Code*, Act XIV of 1859, s. 318—An application by

SUBAJI GIRMASI . I. L. R., 6 Bom., 201

25. — Insolvent judgment-debtor—Application by creditor to prove claim—In July 1878 a person was declared an insolvent under the provisions of Ch. XX of the Civil Procedure Code. Only one creditor then proved his debt, and no schedule was framed. This creditor having applied for the sale of property belonging to the insolvent, another creditor, in May 1883, applied to prove his

26. — Application to amend decree—Act X of 1877 (*Civil Procedure Code*),

28. — Decree, Application to

29. — Civil Procedure Code,

to refuse to do. It does not govern an application

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under s. 206 of the Civil Procedure Code for amendment of a decree, so as to bring it into conformity with the judgment, it being the bounden duty of a Court, of its own motion, to see that its decrees are in accordance with the judgments, and to correct them if necessary. *Gan Prasad v. Sakri Prasad*, I. L. R., 4 All., 23, dissented from. *In re petition of Kishan Singh*, Weekly Notes, All., 1887, p. 262; *Kalyan Choudhary v. Ramnarayan Aggarwal*, I. L. R., 4 All., 172; and *Vithal Janardan v. Vithalprasad*, Patlagirav I. L. R., 6 Ben., 656, referred to. *DARIO v. Kesho Rai* . . . I. L. R., 9 All., 364

30. — *At rendition of decree—Civil Procedure Code, 1852, s. 206—Suit for mesne profits while plaintiff is out of possession.*—There is no limitation for an application under s. 206 of the Civil Procedure Code to amend a decree, it being the duty of the Court to amend it whenever it is found to be not in conformity with the judgment. A instituted a suit for declaration of title and for possession. The decree, which was finally confirmed by the High Court, gave her the declaration sought for, but it contained no direction as to the possession, although the judgment stated that she was entitled to possession. A's son (having been substituted in her place) applied to have the decree amended. The lower Appellate Court held that the application was barred by limitation. The High Court on appeal upheld the lower Court's order not on the ground of limitation, but on the ground that the application to amend the decree had been made in the wrong Court. A's son then instituted a fresh suit against the same parties for declaration of title, perpetual injunction, and for mesne profits. Held that the plaintiff was entitled to have the decree amended under s. 206, Civil Procedure Code, and that, though the plaintiff's claim to possession was barred, yet his right was not extinguished, and he, having therefore a subsisting title, was entitled, though out of possession, to maintain the suit so far as it sought to recover mesne profits. *KALU v. LATU* . . . I. L. R., 21 Cal., 259

31. — *Decree as originally framed incapable of execution—Amendment of decree—Application for execution of amended decree.*—Where a decree as originally framed was found by the High Court to be incapable of execution, and was not finally amended by that Court, so as to become capable of execution, until nearly twelve years after it was passed, it was held that an application to execute such decree which was made within three years from the date of the amendment of the decree was within time, the rule of limitation applicable being that prescribed by art. 178 of sch. II of Act XV of 1877. *MUHAMMAD SULEMAN KHAN v. MUHAMMAD YAR KHAN* . . . I. L. R., 17 All., 39

32. — *Application for order absolute for sale of mortgaged property—Transfer of Property Act (IV of 1882), s. 89.*—Art. 178 of sch. II of the Limitation Act, 1877, does not apply to an application for an order absolute for the sale of mortgaged property under s. 89 of the Transfer of Property Act, 1882. *Bai Manekbai v. Manekji Katarji*, I. L. R., 7 Bom., 213, approved. *RANBIR SINGH v. DRIGPAL* . . . I. L. R., 16 All., 23

LIMITATION ACT, 1877—continued.

Contra, *CHUNNI LAL v. HARNAM DASS*
I. L. R., 20 All., 302

33. — *Transfer of Property Act (IV of 1882), s. 89—Application for an order absolute for sale of mortgaged property.*—An application under s. 89 of the Transfer of Property Act (IV of 1882) to have a mortgage-decree for sale made absolute is not governed by art. 178, sch. II of the Limitation Act, 1877. That article is limited to applications under the Code of Civil Procedure. *Bai Manekbai v. Manekji Katarji*, I. L. R., 7 Bom., 213, and *Ranbir Singh v. Drigpal*, I. L. R., 16 All., 23, approved. In dealing, however, with such an application, the Court may be guided by considerations as to whether any delay on the part of the mortgagee has not been unreasonable, so as to bring it within the rules applied in such cases by Courts of equity. So long as the final order for sale is not passed, the suit may properly be regarded as pending. *THUCK SINGH v. PARSOTRIN PROSHAD* . I. L. R., 22 Cal., 924

34. — *Application for a decree under s. 90—Transfer of Property Act (IV of 1882).*—Held that the limitation governing an application for a decree under s. 90 of the Transfer of Property Act is that prescribed by art. 178 of the second schedule to the Limitation Act, 1877. *RAM SARUP v. GHAVRANI* . . . I. L. R., 21 All., 453

35. — *Application for resale in execution of decree—Continuous proceedings.*—Upon an application made on the 28th August 1891, for execution of a mortgage decree, the mortgaged property was sold, and the judgment-debtors purchased it benami at a low price. Thereupon the decree-holders made an application, on the 12th November 1891, asking the Court to set aside the benami purchase and resell the property. The first Court found that the purchase was not benami, and confirmed the sale on the 12th April 1892, but the lower Appellate Court came to a contrary conclusion, and set aside the sale on the 22nd July 1892. The High Court, in second appeal, finding of the Appellate Court to be erroneous, being benami, but upheld the sale with the remark that the said property and any other property of the debtors might be sold in satisfaction of the mortgage-debt. This judgment was passed on the 4th August 1893. On an application for execution made on the 3rd December 1894, an objection was raised on the ground of limitation. Held that the application of the 3rd December 1894 might be regarded as a continuation of the application of the 12th November 1891, for resale of the property; and as the decree-holders were precluded by the first Court's finding of the 12th April 1892, from asking for sale until it was reversed by the lower Appellate Court on the 22nd July 1892 and finally by the High Court on the 4th August 1893, the application was in time under art. 178, sch. II, Act XV of 1877. *Pyaroo Tukovildar v. Nazir Hossein*, 23 W. R., 133; *Chandra Prodhan v. Gopi Mohan Shaha*, I. L. R., 14 Cal., 385; *Paras Ram v. Gardner*, I. L. R., 1 All., 355; *Kalyanbhai Dipchand v. Ghansham*, 101 Judicathji, I. L. R., 5 Bom., 29; and *Chintamon*.

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Damodar Agarwal v. Bhisar I L R. 23 Cal. 294
 referred to. **RAGHUNATH AGARWAL v. Bhisar**
LALIT SINGH I L R. 23 Cal. 337

36 ————— **Effect of order for execution after a decree is set aside.**
 Certain holders of a decree for the Transfer of Property Act applied for execution of their decree on the 6th of January 1890 and the application was granted. A third party however appeared and filed an objection to the execution of the decree on the ground that the decree was set aside by the Court of Civil Procedure which was allowed. Thereupon the decree-holders brought a suit under art. 113 of the Code. They claimed a decree on the 6th of June 1890 but the matter was not passed until the 2nd of May 1891. On the 6th of January 1890 the decree-holders again applied for execution of the decree. Held that execution was time-barred under art. 1 of the second schedule to Act XV of 1877. **DEVI SINGH v. KARAN KHAN I L R. 19 All. 71**

37 ————— **Application to set aside a sale by a person who is not a party to the sale.**
 A person who is not a party to the sale, applied to set aside the sale. Held that the application was not maintainable.

right to apply against CHAND LAXMI DASTA v. SANTO MOHAR DASTA I L R. 24 Cal. 707
[C. W. N. 53]

38 ————— **Application to set aside a sale on ground of fraud.**
 An application to set aside a sale on the ground of fraud is referred to art. 1 of the Limitation Act. **VENKAT CHAND KARN v. DEVI NATH KARN 2 C W N. 1**
BRUNO MOHAR PAL v. NIKHIL LA DIT I L R. 23 Cal. 324

See MOTT LAL CHANDRACHARI v. BISHU CHANDRA BARRAJ I L R. 23 Cal. 323
 which places such an application under art. 1 of the Limitation Act.

39 ————— **Where a judgment is set aside and the decree is restored.**
 Where a judgment is set aside and the decree is restored, the period of limitation for execution of the decree is calculated from the date of the judgment. **VENKAT CHAND KARN v. DEVI NATH KARN 2 C W N. 291**

LUCHMIPAT v. MANDIL KORN 3 C W N. 233
40 ————— **Limitation Act, 1877, art. 1.**
 A person who is not a party to the sale, applied to set aside the sale. Held that the application was not maintainable.

41 ————— **Joint-decree-holders barred in execution of a decree for possession of certain lands and for mesne profits.**
 A decree for possession of certain lands and for mesne profits, dated the 1st of August 1890, was granted. Two decree-holders, one of whom was a minor, applied on the 4th April 1892 for execution of the amount of such mesne profits. It was held that the application was barred by the Limitation Act. **YOL III**

LIMITATION ACT, 1877—contd.

42 ————— **Limitation Act, 1877, art. 1.**
 A person who is not a party to the sale, applied to set aside the sale. Held that the application was not maintainable.

43 ————— **Limitation Act, 1877, art. 1.**
 A person who is not a party to the sale, applied to set aside the sale. Held that the application was not maintainable.

44 ————— **Limitation Act, 1877, art. 1.**
 A person who is not a party to the sale, applied to set aside the sale. Held that the application was not maintainable.

45 ————— **Limitation Act, 1877, art. 1.**
 A person who is not a party to the sale, applied to set aside the sale. Held that the application was not maintainable.

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under s. 206 of the Civil Procedure Code for amendment of a decree, sons to bring it into conformity with the judgment, it being the bounden duty of a Court, of its own motion, to see that its decrees are in accordance with the judgments, and to correct them if necessary. *Gora Prasad v. Sakri Prasad*, I. L. R., 4 All., 23, dissented from. *In re petition of Kishan Singh*, Weekly Notes, All., 1883, p. 262; *Kulasa Gendron v. Ramasari Aggar*, I. L. R., 4 Mod., 172; and *Villal Jagarden v. Vithojirao*, *Putlajirao* I. L. R., 6 Bom., 586, referred to. **DABHO v. KISHO RAO** . . . I. L. R., 9 All., 384

30. ———— *Amendment of decree—Civil Procedure Code, 1852, s. 206—Suit for mesne profits while plaintiff is out of possession.*—There is no limitation for an application under s. 206 of the Civil Procedure Code to amend a decree, it being the duty of the Court to amend it whenever it is found to be not in conformity with the judgment. A instituted a suit for declaration of title and for possession. The decree, which was finally confirmed by the High Court, gave her the declaration sought for, but it contained no direction as to the possession, although the judgment stated that she was entitled to possession. A's son (having been substituted in her place) applied to have the decree amended. The lower Appellate Court held that the application was barred by limitation. The High Court on appeal upheld the lower Court's order not on the ground of limitation, but on the ground that the application to amend the decree had been made in the wrong Court. A's son then instituted a fresh suit against the same parties for declaration of title, perpetual injunction, and for mesne profits. Held that the plaintiff was entitled to have the decree amended under s. 206, Civil Procedure Code, and that, though the plaintiff's claim to possession was barred, yet his right was not extinguished, and he, having therefore a subsisting title, was entitled, though out of possession, to maintain the suit so far as it sought to recover mesne profits. **KALU v. LATU** . . . I. L. R., 21 Calc., 269

31. ———— *Decree as originally framed incapable of execution—Amendment of decree—Application for execution of amended decree.*—Where a decree as originally framed was found by the High Court to be incapable of execution, and was not finally amended by that Court, so as to become capable of execution, until nearly twelve years after it was passed, it was held that an application to execute such decree which was made within three years from the date of the amendment of the decree was within time, the rule of limitation applicable being that prescribed by art. 178 of sch. II of Act XV of 1877. **MUHAMMAD SULEMAN KHAN v. MUHAMMAD YAR KHAN** . . . I. L. R., 17 All., 39

32. ———— *Application for order absolute for sale of mortgaged property—Transfer of Property Act (IV of 1882), s. 89.*—Art. 178 of sch. II of the Limitation Act, 1877, does not apply to an application for an order absolute for the sale of mortgaged property under s. 89 of the Transfer of Property Act, 1882. *Bai Manekbai v. Manekji Karasji*, I. L. R., 7 Bom., 215, approved. **RANBIR SINGH v. DRIPAL** . . . I. L. R., 16 All., 23

LIMITATION ACT, 1877—continued.

Contra, **CHUNNI LAL v. HARNAM DASS**
[I. L. R., 20 All., 302]

33. ———— *Transfer of Property Act (VI of 1882), s. 89—Application for an order absolute for sale of mortgaged property.*—An application under s. 89 of the Transfer of Property Act (IV of 1882) to have a mortgage-decree for sale made absolute is not governed by art. 178, sch. II of the Limitation Act, 1877. That article is limited to applications under the Code of Civil Procedure. *Bai Manekbai v. Manekji Karasji*, I. L. R., 7 Bom., 215, and *Ranbir Singh v. Drigpal*, I. L. R., 16 All., 23, approved. In dealing, however, with such an application, the Court may be guided by considerations as to whether any delay on the part of the mortgagee has not been unreasonable, so as to bring it within the rules applied in such cases by Courts of equity. So long as the final order for sale is not passed, the suit may properly be regarded as pending. **TILUCK, SINGH v. PARSOTTIN PROSHAD** . I. L. R., 22 Calc., 924

34. ———— *Application for a decree under s. 90—Transfer of Property Act (IV of 1882).*—Held that the limitation governing an application for a decree under s. 90 of the Transfer of Property Act is that prescribed by art. 178 of the second schedule to the Limitation Act, 1877. **RAM SARUP v. GHUVRANI** . . . I. L. R., 21 All., 453

35. ———— *Application for resale in execution of decree—Continuous proceedings.*—Upon an application made on the 28th August 1891, for execution of a mortgage decree, the mortgaged property was sold, and the judgment-debtors purchased it benami at a low price. Thereupon the decree-holders made an application, on the 12th November 1891, asking the Court to set aside the benami purchase and resell the property. The first Court found that the purchase was not benami, and confirmed the sale on the 12th April 1892, but the lower Appellate Court came to a contrary conclusion, and set aside the sale on the 22nd July 1892. The High Court, in second appeal, accepted the finding of the Appellate Court as regards the purchase being benami, but upheld the sale with the remark that the said property and any other property of the debtors might be sold in satisfaction of the mortgage-debt. This judgment was passed on the 4th August 1893. On an application for execution made on the 3rd December 1894, an objection was raised on the ground of limitation. Held that the application of the 3rd December 1894 might be regarded as a continuation of the application of the 12th November 1891, for resale of the property; and as the decree-holders were precluded by the first Court's finding of the 12th April 1892, from asking for sale until it was reversed by the lower Appellate Court on the 22nd July 1892, and finally by the High Court on the 4th August 1893, the application was in time under art. 178, sch. II, Act XV of 1877. *Pgaroo Tuhovildarnee v. Nazir Hossein*, 23 W. R., 103; *Chandra Prodhan v. Gopi Mohan Shaha*, I. L. R., 14 Calc., 355; *Paras Ram v. Gardner*, I. L. R., 1 All., 355; *Kalyanbhai Dipchand v. Ghanasham, Lal Jadunathji*, I. L. R., 5 Bom., 29; and *Chintamon*.

LIMITATION ACT, 1877—continued

Damodar Agashe v Balahastri I L R 16 Bom 294 referred to RAGHUNATH SAHAY SINGH & LALJI SINGH I L R, 23 Calc, 397

36 ———— *Renewal of application for execution after intermediate proceedings*—Certain holders of a decree for sale under s 88 of the Transfer of Property Act applied for execution of their decree on the 6th of January 1887 and the application was granted. A third party however appeared and filed an objection under s 278 of the Code of Civil Procedure which was allowed. Thereupon the decree holder brought a suit under s 43 of the Code. They obtained a decree on the 5th of June 1887 but the intervenor appealed and the final decree in appeal was not passed until the 28th of May 1892. On the 27th of April 1892 the decree holders again applied for execution of the decree. *Held* that execution was time barred under art 178 of the second schedule to Act XV of 1877. *DESHAI SINGH & KARAM KHAN* I L R., 19 All, 71

37 ———— *Application to set aside a sale by a person interested in the sale—Bengal Tenancy Act (VIII of 1885) s 173—Limitation Act art 166*—An application to set aside a sale under s 173 of the Bengal Tenancy Act is governed by art 178 sch II of the Limitation Act and should be made within three years from the date when the right to apply accrued. *CHAND MONEE DASTA & SANTO MONEE DASTA* I L R., 24 Calc, 707 [1 C W N, 534]

Deno Nath Kanji 2 C W N 691 referred to BRUBON MORUM PAL & NUNDA LAL DEY [I L R, 26 Calc, 324]

See *MOTI LAL CHAKRABORTY* RUSSICK CHANDRA BARRAJI I L R, 26 Calc, 326 note which places such an application under art 95 of the Limitation Act

39 ———— Where a judgment debtor applies to have an execution sale set aside and all goes circumstances which if found in his favour would amount to fraud on the part of the decree holder or auction purchaser the period of limitation is that provided in art 178 and not that in art 166 of sch II of the Limitation Act. *NEMAI CHAND KANJI & DENO NATH KANJI* 2 C W N, 691

LUCHMIPAT & MANDIL KOER 3 C W N, 333

40 ———— *Limitation Act 1877 s 8—Mesne profits Decree for—Execution of decree—Application for assessment of mesne profits—Joint decree holders—Minor Right of to execute whole decree when remedy of major joint decree holder is barred*—In execution of a decree for possession of certain lands and for mesne profits dated the 1th August 1878 possession having been obtained in

LIMITATION ACT, 1877—continued

the amount due but after repeated reminders had been sent him and no report being submitted the

tion of the decree by ascertainment of the amount of mesne profits and for the recovery of the amount when so ascertained. The judgment debtors pleaded limitation. *Held* that the application was not an application for execution of the decree. The decree

Chodhry v Brojo Soondury Debce I L R 8 Calc 89 dissented from. *Held* also that the provisions of art 178 of sch II of the Limitation Act apply to an application by a decree holder to make

of the delivery of possession of the lands decreed. *Held* further that under s 7 of the Limitation Act the remedy of the minor decree holder was not barred as the other decree holder could not give a valid discharge without his concurrence (*Ahamudden v Gresh Chunder Chamunt* I L R 4 Calc 350 distinguished) and that under s 231 of the Code of Civil Procedure he was entitled to execute the whole decree as though the remedy of the major decree holder was barred. His right was not extinguished. *ANANDO KISHORE DASS BAKSHI & ANANDO KISHORE BOSE* I L R, 14 Calc, 50

41 ———— and art 179—*Application*

procedure. *PURAN CHAND & ROY RADHA KISHEN* [I L R, 19 Calc, 132]

PRYAG SINGH & RAJU SINGH [I L R, 25 Calc, 203]

43 ———— *Decree for possession and*

and that mesne profits for more than three years from the date of the decree should not be awarded even though possession was not delivered during that

LIMITATION ACT, 1877—continued.

period. *NARAYAN GOVIND MANIK v. SONO SADA-SHIV* I. L. R., 24 Bom., 345

43. ———— and art. 179.—*Application for recovery of whole amount of decree under agreement.*—*Civil Procedure Code, s. 257 A.*—On the 27th August 1878 the holder of a decree for money and the judgment-debtor agreed that the amount of the decree should be payable by instalments, and that, if default were made in payment of any one instalment, the whole decree should be executed. The Court executing the decree sanctioned this agreement. On the 28th November 1881, default having been made, the decree-holder applied for recovery of the whole amount of the decree. *Held* that the application was not one to which art. 179, sch. II of the Limitation Act, 1877, was applicable, but art. 178, and the period of limitation began to run from the date of default. The principle recognized in *Raghubans Gir v. Sheosaran Gir*, I. L. R., 5 All., 243, and *Kalyanbhai Dipchand v. Ghanasharlal Jadunathji*, I. L. R., 5 Bom., 29, applied. *SHAM KARAS v. PIARI* I. L. R., 5 All., 598

44. ———— *Plaint in a suit treated as an application under s. 211, Civil Procedure Code, 1882.*—Where a suit is filed under circumstances in which the proper remedy is an application under s. 211 of the Code of Civil Procedure, and the Court in the exercise of its discretion treats the plaint in the suit as an application under s. 211, the rule of limitation applicable will be that appropriate to applications under s. 211, namely, that prescribed by art. 178 of the second schedule to the Limitation Act, 1877. *Jhamman Lal v. Kewal Ram*, *Weekly Notes*, All., 1899, p. 219, and *Biru Mahata v. Shyama Churn Khawas*, I. L. R., 22 Calc., 483, referred to. *LALMAN DAS v. JAGAN NATH SINGH* [I. L. R., 22 All., 378]

45. ———— *Decree prohibiting execution till the expiration of a certain period.*—A decree, which was passed on the 8th December 1881, in a suit on a simple mortgage-bond contained the following provision: "If the judgment-debt is not paid within four months, the decree-holder shall have the power to recover it by a sale of the mortgaged property." On the 17th February 1885, the decree-holder applied for execution of the decree. *Held* that, inasmuch as the decree provided expressly that the decree-holder might not apply for its execution till after the expiry of four months from its date, the limitation of art. 178, sch. II of the Limitation Act, and not of art. 179, should be applied to the case; and the application for execution, having been made within three years from the 8th April 1882, when the right to ask for execution accrued, was not barred by limitation. *THAKAR DAS v. SHADI LAL* I. L. R., 8 All., 56

46. ———— *Decree for possession of immovable property, execution being contingent on non-payment of annuity.*—Where a decree was for possession of immovable property, but its execution was contingent on default being made by the judgment-debtor in the payment year by year of a certain annuity to the decree-holder,—

LIMITATION ACT, 1877—continued.

Held that the decree-holder was not obliged to execute such decree once and for all upon the occurrence of the first default, but might execute it on occasion of any subsequent default; also that the limitation applicable to the execution of such decree was that provided for by art. 178 of sch. II of the Limitation Act, 1877. *THAKAR DAS v. SHADI LAL*, I. L. R., 8 All., 56, referred to. *MUHAMMAD ISLAM v. MUHAMMAD AH SAN* [I. L. R., 16 All., 237]

47. ———— *Application for execution of decree.*—An application for execution of a decree, made on the 29th May 1874, having been rejected, an appeal was preferred to the High Court, which reversed the order of the lower Court. The property of the judgment-debtor had been attached previously to the application for execution, and part of it was afterwards sold on the 6th September 1875. A subsequent application to have a further portion of the attached property sold was rejected on the 17th September 1876, on the ground that not only part of the property, but the whole of it might have been sold on the 6th September. There being nothing to show that the attachment had ever been withdrawn on the 31st December 1877, the judgment-creditor applied that the property of his debtor might be sold in execution of the decree. *Held* that nothing had been done by the judgment-creditor since his application for execution, of the 29th May 1874, "to enforce the decree or kept it in force" (as defined by the Full Bench decision in *Chunder Coomer Roy v. Bhogobutty Prasunno Roy*, 1 C. L. R., 23; I. L. R., 3 Calc., 235); that the right to apply to have the property sold accrued upon the attachment, and accordingly that the present application, inasmuch as it had been made more than three years from the date of the attachment, was barred by limitation under art. 178, sch. II of Act XV of 1877. *JOOBRAJ SINGH v. BUKHORIA ALUMBASSEE KOER* [7 C. L. R., 424]

48. ———— *Application for execution—Intermediate suit—Fresh application—Revival of application.*—On the 27th March 1878, the holder of a decree applied for execution. On the 27th May 1878, the Court made an order directing that the application should be struck off, as the record of the former execution proceedings was in the Appellate Court, and that the decree-holder should make a fresh application when such record was returned. On the 28th May 1881 the decree-holder renewed the application in accordance with such order. *Held*, on the question whether this application was barred by limitation, that it was not an application within the meaning of art. 179, sch. II of Act XV of 1877, but one to which art. 178 would apply; that limitation began to run when the record was returned, and that therefore (three years not having elapsed from that time) the application in question was within time. *Kalyanbhai Dipchand v. Ghanasharlal Jadunathji*, I. L. R., 5 Bom., 29, and *Paras Ram v. Gardner*, I. L. R., 1 All., 355, referred to. *RAGHUBANS GIR v. SHEOSARAN GIR* [I. L. R., 5 All., 243]

LIMITATION ACT, 1877—continued

Damodar Agashe v Balshastri I L R 16 Bom
294 referred to RAGHUNATH SAHAY SINGH &
LALJI SINGH I L R, 23 Calc, 397

36 ———— *Renewal of application
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37 ———— *Application to set aside
a sale by a person interested in the sale—Bengal
Tenancy Act (VII of 1883), s 173—Limitation
Act art 166—*An application to set aside a sale
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by art 178 sch II of the Limitation Act and should
be made within three years from the date when the
right to apply accrues. CHAND MONEE DASTA &
SANTO MONEE DASTA I L R, 24 Calc, 707
[C W N, 534]

BRUDON MOHUN PAL & NYNDA LAL DEY referred to
[I L R, 28 Calc, 324]

See MOTI LAL CHAKRABUTTY & PUSSECK CHANDRA
BARBAJI I L R, 28 Calc, 328 note
which places such an application under art 95 of
the Limitation Act

39 ———— *Where a judgment debtor
applies to have an execution sale set aside and alleges
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or auction purchaser the period of limitation is that
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sch II of the Limitation Act* NEMAI CHAND KANJI
& DEBO NATH KANJI 2 C W N, 691

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40 ———— *Limitation Act 1877 s 8
—Meane profits Decree for—Execution of decree—
Application for assessment of meane profits—Joint
decree holders—Minor Right of to execute whole
decree—
barred
certain
August*

August 1880 two decree-holders one of whom was
a minor applied on the 4th April 1882 for ascertain-
ment of the amount of such meane profits. Upon
that application the amn was directed to ascertain

LIMITATION ACT, 1877—continued

the amount due but after repeated reminders had
been sent him and no report being submitted the
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when so ascertained. The judgment debtors pleaded
limitation. Held that the application was not an
application for execution of the decree. The decree

apply to an application by a decree holder to make

Held further that under s 7 of the Limitation Act
the remedy of the minor decree holder was not barred
as the other decree holder could not give a valid dis-
charge without his concurrence (*Ahamudden v
Girish Chunder Chamunt* I L R 4 Calc 350,
distinguished) and that under s 331 of the Code
of Civil Procedure he was entitled to execute the
whole decree as though the remedy of the major
decree holder was barred his right was not extin-
guished. ANANDO KISHORE DASS BARBAJI & ANANDO
KISHORE DASS I L R, 14 Calc, 50

41 ———— and art 179—*Applica*

PRYAG SINGH & RAJU SINGH
[I L R, 25 Calc, 203]

from the date of the decree should not be awarded,
even though possession was not delivered during that

LIMITATION ACT, 1877—continued.

administrator of the defendant for the purpose of having the decree in the original suit carried out. This suit was dismissed by the Court of first instance under s. 13 of the Code of Civil Procedure, but the Appellate Court, holding that the original suit was subsisting and might be reconstituted, directed that the plaintiffs should be allowed to amend their plaint by putting it into the form of a petition under s. 372 of the Code. On a petition by the plaintiffs praying that the original suit might be revived and restored to the board.—*Held* that the application was not barred under art. 178 of sch. II to the Limitation Act of 1877. Even if art. 178 was applicable, the application would not be barred, limitation running from the time when the suit was allowed to be reconstituted. The Legislature did not intend to include in the Limitation Act every application to a Court with reference to its own list of causes, such as applications to transfer a case from one board to another, to transfer a case to the bottom of the board, change of attorneys, and so forth. **GOVIND CHANDER GUERWANI v. RINGENMONTY**

[I. L. R., 6 Calc., 60; 6 C. L. R., 345]

57. — and arts. 171 and 171A.
—Application to revive suit.—Right to apply.—Pending suit.—The right to apply in a pending suit.—*i.e.*, a suit in which no final order has been made, — is a right which accrues from day to day, and therefore the periods of limitation provided in arts. 171, 171A, and 178 do not apply in an application to revive such a suit. **KEDARNATH DUTT v. HANA CHAND DUTT.** I. L. R., 8 Calc., 420

RAMNATH BHUTTACHARJEE v. UMA CHARAN SINGH 3 C. W. N., 756

58. — *Revival, Application for*
—Civil Procedure Code, 1877, s. 371.—An application by the legal representative of the plaintiff to revive a suit which has abated on the death of the plaintiff may be granted if made within three years from the time when the right to apply accrued, if the applicant can show that he was prevented from sufficient cause from continuing the suit. **BHOORUN DOSS JONHURRY v. DOMAN THAKOOR**

[I. L. R., 5 Calc., 139; 4 C. L. R., 374]

59. — *Death of plaintiff-respon-*
—*dent—No application for substitution—Applica-*
—*tion by defendant-appellant for hearing of appeal.*
—*Held* by the Full Bench that, inasmuch as art. 178, and not art. 171B, of the second schedule of the Limitation Act applied to the case of a deceased respondent, whether plaintiff or defendant in the suit, an application by a defendant-appellant to have his appeal heard in the absence of any representative of the deceased plaintiff-respondent could not be allowed until the period prescribed by art. 178 had expired without the legal representatives of the deceased applying to be brought on the record in his place. **RAM SARUP v. RAM SAHAI**

60. — and art. 179.—*Injunction*
—*restraining execution—Revival of proceedings by*
—*representative of decree-holder—Substitution of*
—*name of representative on the record.*—*J* obtained a decree against the firm of *M R* in 1863, and on the

LIMITATION ACT, 1877—continued.

16th September 1869 applied for execution by attachment and sale of certain immoveable property. The property was attached, but the sale was delayed by various causes until the 5th February 1876, when it was ordered to take place on the 18th March 1877. Meanwhile *P* brought a suit against *J*, and on 14th March 1876 he obtained an injunction restraining *J* from proceeding, *pendente lite*, to the sale of the attached property. *J* appealed against the order granting the injunction, which, however, was confirmed on the 26th June 1878. Meanwhile, on the 22nd January 1877, *J* had died, and thereupon the proceedings in the matter of the injunction as well as in *P*'s suit were carried on by *G* as his representative. On the 19th January 1880, *P*'s suit was dismissed, and with it the injunction of the 14th March 1876 fell to the ground. On the 5th February 1880, *G* applied to have his name substituted for that of *J* in the application for execution of the 16th September 1869, and to proceed with the case; and on the 19th February 1880 this application was granted, and an order made that execution should be proceeded with on *J*'s application of September 1869. *K*, as representing the firm of *M R*, appealed. *Held* that *G* was entitled to execution. Where an application for execution has been made and granted, but the right to execute has been subsequently suspended by an injunction or other obstacle, the decree-holder may apply for a revival of the proceedings within three years from the date on which the right to apply accrues, *viz.*, the date on which the injunction or other obstacle is removed (art. 178 of sch. II of Act XV of 1877). Where a decree-holder, whose right of execution has been thus temporarily suspended, dies, his representative has the same rights as he had himself to apply for and obtain a revival of the proceedings. It was contended in the above case that *G* had no right to apply for a revival of proceedings, unless his name was substituted on the record as *J*'s representative; that as his right to apply for such substitution accrued immediately upon *J*'s death, which had happened more than three years previously, so much of his application of 3rd February 1880 as related to the substitution of names was barred by art. 178 of sch. II of Act XV of 1877; and that consequently the other portion of his application which related to execution was necessarily inadmissible, inasmuch as it depended upon the substitution of *G*'s name, which it was too late to effect. *Held* that, under the circumstances of the case, *G*'s right to apply for the entry of his name in the place of that of *J* could not be regarded as having accrued immediately upon *J*'s death. At that time *J*'s application for execution, being suspended by the injunction, was to all intents and purposes non-existent. It could not be revived until the injunction was removed. During the continuance of the injunction, an application by *G* for the entry of his name could not have been entertained by the Court, inasmuch as *J*'s application for execution was in abeyance and would never be revived at all in the event of *P* succeeding in his suit; and even if *P* failed, it might also happen that *J*'s application would not be revived in favour of *G*, for

LIMITATION ACT, 1877—continued.

I. L. R., 10 Mad.
NIHAL CHAND

I. L. R., 10 All., 403

51. ———— Decree — Execution —
Time occupied in suing to

and obtained a decree in 1853, which was affirmed on appeal in 1853. In 1885 the judgment creditor again applied for attachment and sale of the same land. Held that the application could not be considered as one for the revival of former proceedings, that art. 173 was not applicable to it, and that the application was barred by limitation. *Basant Lal v. Batal Bibi*, I. L. R., 6 All., 23, distinguished. *NARAYANA v. PATTI BRAHMANI*

[I. L. R., 10 Mad., 22]

LIMITATION ACT, 1877—continued.

53. ———— Application for refund of
— accrual of right to apply — The

54. ———— Application under Civil
— refund of
— appeal —
— neys levied
— reversed on

appeal is not governed by art. 179, but by art. 178, of sch. II of the Limitation Act. *KURUPAN ZAMINDAR v. SADASIYA*, I. L. R., 10 Mad., 88. *HARISH CHANDRA SHAIKH v. CHANDRA MOHAN DASS*, I. L. R., 23 Cal., 109.

Contra *NAVDRAM v. SITARAM*

[I. L. R., 8 All., 545]

55. ———— Civil Procedure Code,
— Sale in execution set aside — Application

that provided by art. 175 of sch. II of the Limitation Act (XV of 1877), that the right to apply accrued on the passing of the High Court's decree, and that the application was therefore not barred by

56. ———— Application to revive a case and restore it to the board — After a decree had been made in a suit, the case was in 1875 struck out of the board for want of prosecution. No steps were taken to have it restored. In 1879 both the plaintiff and defendant died. In the same year the heirs of the plaintiff instituted a suit against the

LIMITATION ACT, 1877—continued.

that the amount of the decree should be paid by five instalments, the first instalment being due in July 1882, and that in default of payment of any instalment the whole amount should be due and recoverable in execution. Default was made in payment of the first instalment, nor was there any subsequent payment of that or any other instalment. On 30th July 1886 *R* applied for execution of the four last instalments, alleging that the first had been paid. *Held* that the application was barred by limitation under art. 178, sch. II, Limitation Act, 1877. *Hurranath Roy v. Maheswollah*, *B. L. R.*, Sup. Vol., 618; 7 *W. R.*, 21; *Dalsout Rattan Chand v. Chugan Narain*, *I. L. R.*, 2 *Bom.*, 356; *Sitib Dat v. Kalka Persad*, *I. L. R.*, 2 *Alh.*, 413; *Cheni Bas Shaha v. Kundam Mundul*, *I. L. R.*, 5 *Calc.*, 97; *Asmatullah Dalal v. Kali Churn Mitter*, *I. L. R.*, 7 *Calc.*, 56; *Nit Madhub Chuckerbutty v. Ram Sadoy Ghose*, *I. L. R.*, 9 *Calc.*, 557; *Ram Kalpo Bhattacharji v. Ram Chander Shome*, *I. L. R.*, 14 *Calc.*, 352; and *Chander Kunal Das v. Bisassurree Dassia*, 13 *C. L. R.*, 213, referred to. *MOY MONTEY ROY v. DRUGA CHURN GOORN*. *I. L. R.*, 15 *Calc.*, 502

67. Sanction to prosecution—

Application for such sanction—Criminal Procedure Code, s. 195.—Rules of limitation are foreign to the administration of criminal justice, and it is only by express statutory provision that any rule of limitation could be made applicable to criminal cases. Art. 178, sch. II, Limitation Act (XV of 1877), must be construed with reference to the wording of the other articles, and can relate only to applications *ejusdem generis*. A suit was instituted for possession of certain land on which stood a factory. In proof of the claim, the plaintiffs filed in Court a sarkhat or lease which was pronounced by the Munsif to be a forgery. Plaintiffs appeared up to the High Court, where, on the 24th June 1886, the Munsif's decree was affirmed. Defendants then applied to the Munsif for sanction to prosecute the plaintiffs for the offence of using a forged document knowing the same to be forged. The Munsif refused to sanction the prosecution prayed for; but on application to the Sessions Judge such sanction was granted. On application to revise the Sessions Judge's order granting sanction, it was contended that, after the lapse of nearly three years, sanction to prosecute should not have been granted. *Held* that there is no fixed period of limitation for making application for sanction under s. 195 of the Criminal Procedure Code. *QUEEN-EMPRESS v. AJUDHIA SINGH*

[*I. L. R.*, 10 *All.*, 350

68. Application to rescind

leave to sue—Decree—Order.—The granting of leave to sue is neither a decree nor an order, and the period of limitation for an application to rescind it is that provided by art. 178 of the Limitation Act (XV of 1877), viz., three years. *KESROWAJI DAMODAR JAYRAM v. LUCKMIDAS LADHA*

[*I. L. R.*, 13 *Bom.*, 404

LIMITATION ACT, 1877—continued.

art. 179 (1871, art. 167; 1859, s. 20).

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| 1. LAW APPLICABLE TO APPLICATION FOR EXECUTION | 5305 |
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| See PARTITION—MISCELLANEOUS CASES. | [<i>I. L. R.</i> , 22 <i>Calc.</i> , 425 |
| See PAUPER SUIT—SUITS. | [2 <i>B. L. R.</i> , Ap., 22 |
| See SPECIAL OR SECOND APPEAL—GROUNDS OF APPEAL—QUESTIONS OF FACT. | [13 <i>B. L. R.</i> , Ap., 1 |
| | 5 <i>B. L. R.</i> , Ap., 59 |

LIMITATION ACT, 1877—continued

even if he were J's representative at the date of his application he might be dead before the decision of J's suit *KALYANBHAI DIPCHAND v GHANA BHANDAL*. I L R, 5 Bom, 28

61. ———— *Death of sole defendant*
—Legal representative—Civil Procedure Code (Act X of 1877) as 368, 372—In a suit for the

Court to enter on the record the legal representative of the deceased defendant. On the 2nd of November 1880 the Court rejected the application under the provisions of Act XV of 1877, sch II art 171b, and ordered the suit to abate. On the same day the plaintiff applied to the Court to set

1877, sch II art 178 *Gocool Chunder Goswami v Administrator General of Bengal*, I L R 5 Calo, 726 referred to *BENODE MOHINI CHOWDHRAIN v SHARAT CHUNDER DEB CHOWDHRY* [I L R, 8 Calo, 837 10 C L R, 449 12 C L R, 421]

62. ———— *Application for fresh summons—Filing of plaint*—A plaint was filed on 12th March 1875 and the summons to the defendant to appear and answer issued on 13th March 1875. With the exception of an application for substituted service made on 20th March 1875 and which was refused, no further steps were taken in the matter until 21st March 1878, when the plaintiff applied for a fresh summons to issue, the time for the return of the first summons having long since expired. Held that the mere filing of a plaint, or the naked fact that a plaint is on the file, will not of itself prevent the operation of the law of limitation, and that, as no steps had been taken to renew the summons for three years

63. ———— *Application for summons after period of limitation had expired—Rules of*

not barred by limitation *GERENDER LOOMAR DUTT v JUGGADUMBA DABSE* I L R, 5 Calo, 128

64. ———— *Per curiam* (KREHAN, J, dissenting)—An application by an appellant to make

LIMITATION ACT, 1877—continued

the representative of a deceased respondent party to the appeal does not fall under art 171B, but under art 178, of sch II of the Limitation Act, 1871 *LAKSHMI v SAI DEVI* I L R, 8 Mad, 1

65. ———— *Sole in execution of decree*
—Interest of purchaser—Second sale of same property in execution of subsequent decree—Interest of purchaser at such subsequent sale subject to interest of purchaser under prior sale—Registered certificate of second sale—Act VIII of 1859—Civil Procedure Code (XIV of 1852) s 294—Purchase by decree holder at execution sale—Right to set aside such purchase—In 1854 the plaintiff brought the present suit against the defendant to recover possession of a certain house which he had purchased at a sale held on the 15th March 1850, in execution of a money decree obtained against one C. He obtained a certificate of sale on the 3rd January 1850 which was registered on the 13th of the same month. The defendant had previously purchased the same property at a sale held on the

In a suit by the plaintiff for possession it was contended that under s 294 of the Civil Procedure

purchaser not aware of this ground had been raised by limitation long before this suit was brought. The purchase by the defendant was not void *ab initio*, but only voidable on the application of the judgment debtor or other person interested in the sale.

Further
action
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1st October 1880 *CHINTAMANRAY NATU v VITHABAI* I L R, 11 Bom., 588

66. ———— *Execution of decree—Decree payable by instalments—Instalment, Default in payment of*—When a decree or order makes a sum of money payable by instalments on certain dates, and provides that, in default of payment of any instalment the whole of the money shall become due and payable and be recoverable in execution, by art 178, sch II of the Limitation Act limitation begins to run from the date of the first default, unless the right to enforce payment in default has been waived by subsequent payment of the overdue instalment on the one hand and receipt on the other. R obtained a decree against D C and K G for a sum of money on 21st June 1880. On 25th May 1882 an order was made in terms of the petition of both parties, providing

LIMITATION ACT, 1877—continued.**1. LAW APPLICABLE TO APPLICATION FOR EXECUTION—continued.**

1859, to constitute a fresh terminus whence time might run under that Act. **GOVIND LAKSHUMAN v. NARAYAN MARSHIVAR**. 11 Bom., 111

BALKRISHNA v. GANESH 11 Bom., 118 note

10. ——— Act IX of 1871, s. 1—Execution of decree in suit instituted before 1st April 1873.—An application for execution of a decree is an application in the suit in which that decree has been obtained. From this, and from the enactment in s. 1 of Act IX of 1871 that nothing contained in s. 2, or in Part II of that Act, shall apply to suits instituted before the 1st April 1873, it follows that nothing contained in sch. II of that Act extended to an application for execution of a decree in a suit instituted before that date. No such application was barred by s. 20 of Act XIV of 1859, if made within three years from the date of a proceeding within the meaning of that section. Although the execution of a decree may have been actually barred by time at the date of an application made for its execution, yet, if an order for such execution has been regularly made by a competent Court, having jurisdiction to try whether it was barred by time or not, such order, although erroneous, must, if unreversed, be treated as valid. **MUNGUL PERSHAD DICHIT v. GRIJA KANT LAHIRI** I. L. R., 8 Calc., 51: 11 C. L. R., 113 [I. L. R., 8 I. A., 123]

Reversing on appeal, **MUNGUL PERSHAD DICHIT v. SHAMA KANT LAHIRI CHOWDHRY**

[I. L. R., 4 Calc., 708]

11. ——— Application for execution—Act IX of 1871, s. 1.—The time prescribed by the Limitation Act (IX of 1871) within which applications for execution may be made governs all such applications made during the time that Act was in force. **UNNODA PERSHAD ROY v. KOORPAN ALI**

[I. L. R., 3 Calc., 518: 1 C. L. R., 408]

12. ——— Application for execution—Law in force at time of application.—The law of limitation applicable to proceedings in execution is not the law under which the suit was instituted, but the law in force at the date of the application for execution, in absence of a legislative provision to the contrary (such as that contained in s. 1 of Act IX of 1871). **GURUPADAPA BASAPA v. VIBHADRAPA IRSANGAPA** I. L. R., 7 Bom., 459

13. ——— Execution of decree—Limitation applicable to execution of a decree passed previous to the 1st October 1877—Limitation Act (XV of 1877), art. 179—General Clauses Consolidation Act (I of 1868), s. 6, Effect of.—In execution of a decree, dated the 17th January 1877, the judgment-creditor applied on the 13th May 1878 to have the property of his judgment-debtor sold on the 16th September 1878. Subsequently, on the 2nd June 1881, he made a further application to have the decree executed. Held that the case was governed by the provisions of art. 167 of Act IX of 1871, and not those of art. 179 of Act XV of 1877; and that, application had not been made within any one

LIMITATION ACT, 1877—continued.**1. LAW APPLICABLE TO APPLICATION FOR EXECUTION—continued.**

of the periods given in the third column of art. 167, it was barred by limitation. Held also, following **Mungul Pershad Dichit v. Grija Kant Lahiri**, I. L. R., 8 Calc., 51, that, although there is no corresponding provision in Act XV of 1877 to that contained in s. 1 of Act IX of 1871, all applications for execution of a decree are applications in the suit which resulted in that decree. **BEHARY LALL v. GOBERDHUN LALL**

[I. L. R., 9 Calc., 446: 12 C. L. R., 431]

14. ——— Execution of decree, Application for—Step in aid of execution—Repeal, Effect of.—On the 28th September 1877 an application was made for execution of a decree. On the 8th July 1878 the decree-holder deposited Rs 2 as nilamee fees, that is to say, costs for bringing certain property to sale in execution of the decree. On the 28th March 1881 a further application for execution of the decree was made. Held that the deposit of Rs 2 as nilamee fees on the 8th July 1878 was a step in aid of execution of a decree, and that the application of the 28th March 1881, being within three years from the date of the deposit, was not barred by limitation. *Quære*—Whether, inasmuch as Act IX of 1871 is repealed by Act XV of 1877, and the latter Act contains no provision similar to that contained in s. 1 of Act IX of 1871, Act XIV of 1859 can be said to have been repealed in respect of suits instituted before the 1st of April 1873. **RADHA PRASAD SINGH v. SUNDUR LALL** I. L. R., 9 Calc., 644

15. ——— Act IX of 1871, s. 1—Application for execution of decree passed before Act of 1877 came into force—Application to keep alive decree.—The plaintiff obtained a decree against the defendant in 1872. He first applied for its execution in 1874, and his application was disposed of on the ground that the requisite Court-fee had not been paid. His next application was in 1876, and it was disposed of because no property could be found to satisfy the decree. His third application, made on the 10th of March 1879, was one asking merely that the decree might be kept alive. He now applied for the fourth time on the 26th of November 1881, and sought execution of the decree. Held that the law of limitation applicable to proceedings in execution is not the law under which the suit was instituted, but the law in force at the date of the application for execution, in absence of a legislative provision to the contrary (such as that contained in s. 1 of Act IX of 1871). The law of limitation therefore to be applied to the application of the 10th March 1879 was Act XV of 1877; and, inasmuch as that application did not ask for any step to be taken towards executing the decree, it was not in accordance with art. 179, sch. II of Act XV of 1877, and did not save the present application from being barred. **Mungul Pershad Dichit v. Grija Kant Lahiri**, I. L. R., 8 Calc., 51, explained. **GURUPADAPA BASAPA v. VIBHADRAPA IRSANGAPA** I. L. R., 7 Bom., 459

16. ——— Proceeding to enforce judgment.—Act XV of 1877 operates from the date

LIMITATION ACT, 1877—continued

1 LAW APPLICABLE TO APPLICATION FOR EXECUTION.

1. ———— Application for execution
 2. ———— " " " " " " " "

made under the provisions of s 52 of Act XV of 1863 upon a bond specially registered under the provisions of s. 2 of that Act JAI SHANKAR v TETLEY I. L. R., 1 All., 586

But see BHAIAMBAT v. FERNANDEZ

[I. L. R., 5 Bom., 673

2. ———— Order for costs by High Court on appeal—An order for costs made by the High Court on appeal came within the scope of art 167 of the Limitation Act of 1871, sch II HURBANS LALL v. SHLOKARAIN SINGH 21 W. R., 391

3. ———— Application for execution of decrees for costs when rejecting petition to appeal to Privy Council—The period of limitation within which application must be made for execution of an order for costs passed by the High Court when rejecting a petition for leave to appeal to the Privy Council is that specified in sch II, art 167, of Act IX of 1871 HURBO PERSHAD ROY CHOWDHURY v. BHUPENDRO NARAIN DUTT I. L. R., 6 Calc., 201; 70. L. R., 79

4. ———— Application to ascertain how much judgment-creditor has been paid—An

gence MUTHOOBA PERSHAD SINGH v. SHUMBOO GEER 22 W. R., 211

5 ———— Decree in force at passing

6. ———— Decree in force at passing of Act XIV of 1859—In 1845 K and M obtained a joint decree for possession and mesne profits against N. In 1846 possession was taken, and the case was struck off in 1847 In 1850 K alone applied for execution and was refused, he not being the sole decree-holder K disappeared in June in 1851, and was never afterwards heard of. In February 1852 S S. wife of K, and R, uncle of K, applied to execute the decree, alleging that it had been transferred in gift to them by K, but their application was rejected, because M had not joined, and, secondly, because no order could be passed in the absence of K. On 28th December 1861 S S again applied for execution of the whole decree, claiming her husband's share as his heir, and M's under a deed of gift, and her application was rejected on the

LIMITATION ACT, 1877—continued.

1 LAW APPLICABLE TO APPLICATION FOR EXECUTION—continued.

ground that as twelve years from the disappearance of her husband had not expired, and she had not performed the ceremony of koushaputra, she could not claim as his representative An appeal from this order was rejected on 6th December 1863 In 1863

The Court found that the various attempts to execute were made *bona fide* Held first that the decree was in force at the time of the passing of Act XIV of 1859, secondly, that the present application, having been made within three years of the proceedings in 1861 was in time, under s 20 of that Act POGOSSE v. BOISTUB LALL

[2 Ind Jur., N. S., 1: 6 W. R., Mils, 104

7. ———— Application for execution of decree—Application for execution of a decree passed on 13th May 1869, and for which the period of limitation was three years was made on 13th May 1872 Held the execution was barred by art 167, sch II of Act IX of 1871 notwithstanding the suit had been instituted before 13th April 1873 NUNDO COOMAR MOOKERJEE v. ISSUR CHUNDER BRUTTACHARI 12 B. L. R., Ap, 9

8. ———— Period from which limitation runs—Payments since that date—Limitation Act (No IX of 1871) governs applications to execute decrees made before the Act and, in computing the period of limitation, the Act directs the date of the prior application to be taken, and that date cannot be altered because intermediate payments may have been made on account of maintenance NARANAPPA AITAN v. NAMA AMMAL alias PARVATHY AMMAL [8 Mad., 97

See KRISHNA CHETTY v. RAMI CHETTY [8 Mad., 89

MAHALAKSHMI AMMAL v. LAKSHMI AMMAL [8 Mad., 105

COLLECTOR OF SOUTH ARCOT v. THATACHARY [8 Mad., 40

9 ———— Application for execution of decree—General Clauses Consolidation Act, 1863, s. 6—An application for execution of a decree being made on the 27th September 1871.—Held not to be a suit within the meaning of s. 1, cl (a), of Act IX of 1871, and therefore barred under sch II, art 167, of that Act, as having been made more

March 1870, would possibly have been a sufficient proceeding within the 20th section of Act XIV of

LIMITATION ACT, 1877—continued.

2. PERIOD FROM WHICH LIMITATION RUNS—continued.

date of such decision. *SURESH CHANDER ROY v. GORUCK CHANDER DUTTA* . . . 14 W. R., 477

53. ———— *Final decision of Court where proceedings are contested.*—So long as an actual contest is going on between a decree-holder and judgment-debtor as to the judgment, limitation must be computed from the final decision of the Court. *DINNAJ MAHTAN CHUND BANADER v. BUTA LAL SINGH RAJOO*

[5 D. L. R., 611; 14 W. R., P. C., 21
13 Moore's I. A., 479

CHOTAY LAL v. RAM DYAL . . . 2 N. W., 482

MOHOMOOD'S MOOREEJE v. KIRTEE CHUNDER GHORE . . . 18 W. R., 7

54. ———— *Date of final decree.*—A suit was dismissed with costs in a Court of Small Causes, after which an application for a new trial was rejected, and subsequently another application was made for a new trial and referred by the Judge to the High Court, the result being the rejection of the application. After this, defendant applied for execution for the costs. *Held* that the decree became final and conclusive when the Judge rejected the last application in accordance with the decision of the High Court, limitation beginning to run from the date of such rejection. *PRAN KISTO BANERJEE v. NURI-MOOREE* . . . 9 W. R., 397

55. ———— *Decree of Small Cause Court.*—Where a Court of Small Causes delivered final judgment and decree on the whole matter in dispute, and more than a year, but less than three years, had elapsed from the date of the decree without any proceeding having been taken upon it,—*Held* that s. 20, Act XIV of 1859, applied and not s. 22, and that the plaintiff's application for a warrant in execution of the decree was not barred by lapse of time. *PUNCHANADA CHETTI v. RAMAN CHETTI*

[1 Mad., 448

56. ———— *Application for execution recognizing decree on appeal.*—An application for execution of the decree in the original suit and proceedings thereon, which, without formally and expressly asking for execution of the decrees in regular and special appeal, recognized those decrees, and sought relief consistent with the final decree, can be judicially recognized as a proceeding for the purpose of executing the final decree. *AZMUDDIN v. MATHURADAS GOVARDHANDAS GULABDAS*

[11 Bom., 208

57. ———— *Application for execution of decree.*—A decree was passed in June 1851. Application was made for execution on the 21st July 1861, and from that date applications were made at various intervals, each less than three years, up to 1868. Upon different grounds all the applications were rejected, but the last order was reversed on appeal by the Civil Judge. *Held* that the last application was not barred by the Limitation Act. *KARUPPANAN v. MUTHUNNAN SERYEY*

[5 Mad., 105

LIMITATION ACT, 1877—continued.

2. PERIOD FROM WHICH LIMITATION RUNS—continued.

58. ———— *Execution of decree.*—The words "where there has been an appeal" in cl. 2, art. 167 of sch. II of Act IX of 1871, contemplate and mean an appeal from the decree, and do not include an appeal from an order dismissing an application to set aside a decree under s. 119 of Act VIII of 1859. *SHEO PRASAD v. ANRUDDH SINGH*

[I. L. R., 2 All., 273

59. ———— *Execution of decree*—"Where there has been an appeal."—The words "where there has been an appeal" in cl. 2, art. 179 of sch. II of Act XV of 1877, do not contemplate and mean only an appeal from the decree of which execution is sought, but include, where there has been a review of the judgment on which such decree is based, and an appeal from the decree passed on such review, such appeal. *Held* therefore where there had been a review of judgment, and an appeal from the decree passed on review, and such decree having been set aside by the Appellate Court, application was made for execution of the original decree, that time began to run, not from the date of that decree, but from the date of the decree of the Appellate Court. *Sheo Prasad v. Anrudh Singh*, I. L. R., 2 All., 273, distinguished. *NARSINGH SEWAK SINGH v. MADHO DAS* . . . I. L. R., 4 All., 274

60. ———— *Presentation of appeal—Civil Procedure Code (Act XIV of 1882), s. 541—Execution of decree.*—The words "appeal presented" in the Limitation Act, 1877, mean an appeal presented in the manner prescribed in s. 541 of the Code of Civil Procedure. The words "where there has been an appeal," in art. 179, cl. 2, of sch. II of the Limitation Act, 1877, mean where a memorandum of appeal has been presented in Court. In execution of a decree against which an appeal has been presented, but rejected on the ground that it was after time, limitation begins to run from the date of the final decree or order of the Appellate Court. *AKSHOY KUMAR NUNDI v. CHUNDEE MOHUN CHATHATI* . . . I. L. R., 16 Calc., 250

61. ———— *Application for execution of decree for refund of costs—Proceedings to determine whether exemption from costs was personal or in representative character.*—On an application for refund of money deposited as costs, which was alleged to be barred by limitation,—*Held* that, as litigation was protracted between the parties for many years, and the question of liability for costs remained unsettled all that time, limitation would run, not from the date of the original order entitling applicant to a refund, but from the date of the conclusion of the proceedings in the final appeal. *MULLICK MAMOMED YAKOUB v. CHOWDHRY SHAIKH ZUHOORUL HUQ* . . . 25 W. R., 309

62. ———— *Date of final decree.*—A obtained a joint and several money-decrees against four defendants on the 12th November 1872. One of the defendants preferred an appeal, and the decree as against him was set aside by the High Court on the 19th February 1875. Subsequently,

LIMITATION ACT, 1877—continued

1 LAW APPLICABLE TO APPLICATION FOR EXECUTION—continued

on which it came into force as regards all applications made under it *Behary Lall v Goherdhun*

subsequent application was not barred by the provisions of s 20 Act XIV of 1859 *BECHARAM DUTTA v ABDUL WAHED* I L R, 11 Calc, 55

17 ——— Applications under s 89 Transfer of Property Act (IV of 1882) —Art 19 sch II of the Limitation Act (XV of 1877) applies to applications under s 89 of the Transfer of Property Act *BHAGAWAN RAMJI MARWADI v GANU* I L R, 23 Bom, 644

18 ——— Decree of Small Cause Court transferred to High Court for execution—Civil Procedure Code (Act VIII of 1859) ss 287, 288 (Act XIV of 1852), ss 227, 228—Order in suit liable to be questioned by third persons not

character of the Court which passed the decree and

August 1885 The next step in execution was an application made on the 14th September 1884, the usual notice was issued and no cause being shown by the judgment-debtor, an order was made on the 19th December for the attachment of certain moneys in the hands of a receiver belonging to the judgment debtor. These moneys were also attached by other judgment creditors. The question was then referred to the Registrar to enquire and report who under the provisions of s 295 of the Code of Civil Procedure were entitled to share in such moneys and

the Registrar to the Court. Held that, as under art 179 sch II of Act XV of 1877, the period applicable to decrees of the Small Cause Court was three years the application of the 14th September 1885 was

LIMITATION ACT, 1877—continued

1 LAW APPLICABLE TO APPLICATION FOR EXECUTION—concluded

barred by limitation and that S was not entitled to share under the provisions of s. 295. Held further that the order of the 19th December 1884 having been made out of time though on notice to the

the effect of reviving the decree *Ashootosh Dutt v Doorga Churn Chatterjee* I L R 6 Calc 504 doubted *TINCOWBIE DAWN v DEBENDRO NATH MOOKERJEE* I L R, 17 Calc, 491

2 PERIOD FROM WHICH LIMITATION RUNS

(a) GENERALLY

19. ——— Meaning of the words date of the decree —The words date of the decree in sch II art 179 of the Limitation Act mean the date the decree is directed to bear under s 205 of the Code of Civil Procedure and that is the

as pronounced is barred by limitation *Hani Madhub Mitter v Matungini Dass* I L R 13 Calc 104 referred to *GOLAM GAFFAR MANDAL v GOLJAN BIBI* I L R, 25 Calc, 109

AZZUL HOSSAIN v UMDA BIBI 1 C W N, 93

20 ——— Decree specifying a certain time for execution—Construction—Condition precedent —The plaintiff obtained a decree on the 24th July 1882 which directed that he should give the defendant possession of certain parcels of

being time barred. He contended that the plaintiff having failed to deliver up the land in his possession within the time specified in the decree he had lost his right to execute the decree. Held that the application was not time barred. The specification

the enforcement be otherwise subject to a condition or not *NARAIN CHITKO JUEKAR v VITHUL PARSHOTAM* I L R., 12 Bom, 23

21 ——— Execution of decrees determining rights of rival religious sects — Decree, whether executory or declaratory—How far as it bound by decree against some of its members —In a suit determined in 1840 in which various members

LIMITATION ACT, 1877—continued.**2. PERIOD FROM WHICH LIMITATION RUNS—continued.**

from the final decree of the Appellate Court. **BASANT LAL v. NAJMUNNISSA BIBI** I. L. R., 6 All., 14

69.—*Date from which limitation runs—Application to take money out of Court.*—Plaintiff obtained a decree against defendant on the 24th November 1875, and on the 14th October 1876 he got execution and sold some lands of the defendant. On 9th February 1877 he applied to the Court for payment thereof of moneys lodged by the purchaser, and on that day got the money. In the meantime an appeal was presented by the defendant and dismissed on the 28th March 1877. The present application for execution was made on the 7th February 1880. *Held* that art. 179, cl. 2, of the Limitation Act of 1877, which fixes the date of the order of the Appellate Court, when there is an appeal, as the point from which the three years is to count, applied, and that the plaintiff was therefore in time. When there is no appeal, the date of the decree or of application is the point from which limitation counts, but not when there is an appeal. *Held* further that the application by plaintiff to the Court (9th February 1877) for the money paid in by the purchaser was a step taken to aid in the execution of the decree. **VENKATARAYALU v. NARASIMHA** I. L. R., 2 Mad., 174

70.—*Decree of High Court confirmed by Privy Council, Application for execution of.*—Where a judgment-debtor who has appealed to the Privy Council obtains a rule nisi from the High Court suspending execution until security is given, and this rule is subsequently made absolute, it does not operate against the decree-holder in the matter of time: limitation not running against him until the result of the appeal is known, or the rule otherwise falls to the ground. **GUNESH DUTT SINGH v. MUGNEERAM CHOWDHRY** 19 W. R., 186

71.—*Application for execution of decree—Order of Privy Council.*—*Held* that the words "appeal" and "Appellate Court," art. 179 (2), sch. II of Act XV of 1877, include an appeal to Her Majesty in Council. *Held* therefore, where an appeal had been preferred to Her Majesty in Council from a decree of the High Court, dated the 18th August 1871, and the High Court's decree was affirmed by an order of Her Majesty in Council, dated the 12th August 1876, and application for execution of the High Court's decree was made on the 15th July 1879, that under art. 179 (2), sch. II of Act XV of 1877, the limitation of such application must be computed from the date of the order of Her Majesty in Council. **NARSINGH DAS v. NARAIN DAS** I. L. R., 2 All., 763

72.—*"Appeal"—"Appellate Court"—Order of Privy Council—Application for execution of decree*—The term "appeal" in art. 167 of sch. II of the Limitation Act (IX of 1871) includes an appeal to the Privy Council; and the term "Appellate Court" in the same article includes the Judicial Committee of the Privy Council sitting for the purpose of hearing appeals from orders passed by

LIMITATION ACT, 1877—continued.**2. PERIOD FROM WHICH LIMITATION RUNS—continued.**

British Courts in India. Where an appeal had been preferred to Her Majesty in Council from a decree of the High Court reversing the decree of the Court of first instance, and the High Court's decree was affirmed by an order of Her Majesty in Council dated the 15th February 1873, and an application for execution for the High Court's decree was made on the 17th November 1875, more than three years after the date of the decree, but within that period of the order of Her Majesty in Council,—*Held* that, under art. 167 of sch. II, Act IX of 1871, the limitation for such application must be computed from the date of the order of Her Majesty in Council, and consequently that the application for execution was not barred. **GOPAL SAHU DEO v. JOYRAM TEWARY** [I. L. R., 7 Calc., 620; 9 C. L. R., 402

73.—*Appeal by one of several defendants—Execution of decree—Application for execution against defendant who has not appealed.*—On the 11th July 1877 a decree was made against B and J, the defendants in a suit, against which J alone appealed, such appeal not proceeding on a ground common to him and B. The Appellate Court affirmed such decree on the 20th November 1877. On the 23rd September 1880 the holder of such decree applied for execution against B. *Held* that, so far as B was concerned, limitation should be computed from the date of such decree, and not from the date of the decree of the Appellate Court, and such application was therefore barred by limitation. **SANGRAM SINGH v. BUJHARAT SINGH** I. L. R., 4 All., 38

74.—*Appeal by some only and not all of the defendants—Amendment of decree—Review of judgment.*—On the 7th July 1864 a District Court gave the plaintiff in a suit a decree against all the defendants, including B. All the defendants appealed to the Sudder Court from such decree, except B. The Sudder Court, on the 6th March 1865, set aside such decree and dismissed the suit. The plaintiff appealed to Her Majesty in Council from the Sudder Court's decree, all the defendants except B being respondents to this appeal. Her Majesty in Council, on the 17th March 1869, made a decree reversing the Sudder Court's decree and restoring that of the District Court. On the 9th October 1869 the plaintiff applied for execution of the District Court's decree, and such decree was under execution up to July 1872. On the 9th October 1874 the plaintiff applied for amendment of such decree in certain respects, it being incapable of execution in those respects. B was a party to this proceeding. On the 16th August 1876 such decree was amended; and the plaintiff subsequently applied for its execution as amended against all the defendants. *Held* that the application of the 9th October 1869 was within time, computing from the date of the decree of Her Majesty in Council. **Chedoo Lal v. Nand Coomar Lal**, 6 W. R., M.S., 60. Also that the application to amend such decree, being substantially one for review of judgment, gave under art. 167, sch. II of Act IX of 1871, a period from

LIMITATION ACT, 1877—continued**2. PERIOD FROM WHICH LIMITATION RUNS—continued.**

on the 1st of August 1878, *A* sued out execution against the three defendants who had not appealed. *Held* that *A*'s suit was not barred by limitation, as

the mean-
decree as
February
SUNKUR

BRUTTACHARJEE . 3 C. L. R., 430

63. ———— Execution of decree
—Final decree of Appellate Court—The Munsif gave the plaintiffs in a suit for possession of land

and on the 7th June 1873 the plaintiff again obtained a decree for mesne profits. Finally, on the 6th March 1874 the High Court modified the Judge's decree for possession, but did not interfere with the order of remand. *Held*, on the plaintiffs

DASAUNDHI RAM I. L. R., 1 All, 508

64. ———— Execution of joint
decree against two or more defendants—In a suit for possession of land brought by *A* against *B*, *C*, and *D*, a decree was passed on the 14th of April 1874 for possession and costs against *B*, *C*, and *D* jointly. This decree was afterwards reversed on an appeal by

against *C* and *D* for the costs specified in the decree passed on the 14th April 1874. *C* and *D* success-

of Act XV of 1877. *Held* on appeal to the High

LIMITATION ACT, 1877—continued**2. PERIOD FROM WHICH LIMITATION RUNS—continued**

order of the High Court. **MULLICK AHMED ZUMMA alias TETUR v. MAHOMED SYED**

[I. L. R., 8 Cal., 194; 6 C. L. R., 573]

65. ———— "Appellate Court"
—Execution of decree—The meaning of para 2 to art. 179 of the second schedule of Act XV of 1877 is, that where there has been an appeal, the period of limitation is to run from the date when the Court to which that appeal has been preferred passes an order disposing of the appeal. The words "Appellate Court" signify the Court or Courts to which the appeal, mentioned in the article, has been preferred. **WAZIR MAHOMED v. LULIT SINGH**

[I. L. R., 9 Cal., 100]

66. ———— Execution of decree—

under such circumstances, there had not been an

[I. L. R., 10 All., 400]

67. ———— Starting point for
limitation where an appeal has abated—*Held*

limitation would run from the date of the original decree. **FAZAL HUSEN v. RAJ BANADUR**

[I. L. R., 20 All., 124]

68. ———— Application for execu-

recovered by the sale of the mortgaged property. On the 14th September 1882 *B* applied for execution of the decree against *N*. *Held* that the period of limitation for the application was governed by art. 179 of the Limitation Act, and such period would run

LIMITATION ACT, 1877—continued.

2. PERIOD FROM WHICH LIMITATION RUNS—continued.

disallowed.—A brought a suit against B for a sum of money, and obtained a decree for a portion of the amount claimed. On the 30th November 1891, the plaintiff appealed as to the balance of his claim; but the appeal was dismissed by the District Court on the 1st June in 1892 and by the High Court on the 31st May 1894. On an application, on the 1st June 1895, by the assignee of the original decree-holder, to execute the said decree, an objection was raised by the judgment-debtor that execution was barred by lapse of time. *Held* that art. 179, sch. II, cl. (2), of the Limitation Act applied to the case, the period of limitation ran from the date of the final decree of the Appellate Court, and the application for execution, being within three years from that date, was within time. *Sakhalehand Rikhardas v. Felchand Gujar, I. L. R., 18 Bom., 203, followed.*

HARKANT SEN v. BIRAJ MOHAN ROY

[I. L. R., 23 Calc., 878]

81. — *Appeal by one of several defendants against part of the decree.*—The plaintiff obtained a joint decree against defendants for possession of immovable property and damages on 21st May 1886. Against that decree all the defendants except defendant No. 1 appealed, and on 2nd July 1887 so much of the decree was reversed as made the appealing defendants liable for damages, but was affirmed in all other respects. A second appeal by the plaintiff from the decree of the Appellate Court was dismissed by the High Court on 9th July 1888. An application for execution of the decree was made by the plaintiff on 7th July 1891, within three years from the date of the final decree dated 9th July 1888. Defendant No. 1 objected that limitation as against him would run from 21st May 1886, there being no appeal by or against him from the decree of that date. *Held* that limitation against defendant No. 1 would run from date of decree in appeal, therefore the application for execution was not barred by limitation. *Gunga Mooye v. Shab Sunker, 3 C. L. R., 430, followed. Mashiat-un-nissa v. Rani, I. L. R., 13 All., 1, distinguished. GOPAL CHUNDR MANNA v. GOSAIN DAS KALAY*

[I. L. R., 25 Calc., 594
2 C. W. N., 556]

82. — *Ex-parte decree—Application to set decree aside—Appeal from order rejecting application—Subsequent application for execution of decree more than three years after date of decree.*—The plaintiff obtained an *ex-parte* decree against the defendant on the 16th March 1886. The defendant applied to have the decree set aside. His application was finally rejected by the Appellate Court on 5th March 1887. The decree-holder presented a darkhast for execution of the decree on 24th September 1889. *Held* that the darkhast was time-barred under art. 179, cl. 2, of the Limitation Act (XV of 1877). The appeal referred to in that clause is clearly an appeal from the decree or order sought to be executed, and not an appeal from an order of the Court refusing to set it aside. The unsuccessful

LIMITATION ACT, 1877—continued.

2. PERIOD FROM WHICH LIMITATION RUNS—continued.

attempts made, by the defendants to set aside the *ex-parte* decree could not have the effect of extending the period prescribed by law for execution of the decree. *JIVAJI v. RANCHANDRA . I. L. R., 16 Bom., 123*

83. — *Execution of decree—Appeal by plaintiff against part of decree making all defendants respondents—Execution of part of decree not appealed against.*—On the 23rd March 1886 the plaintiff obtained a decree in the Court of first instance against five defendants, declaring his right to certain specific immovable property, which was, however, modified on an appeal preferred by the defendants, the decree of the lower Appellate Court giving the plaintiff a decree for only two-thirds of the property claimed, and dismissing his suit in respect of the remaining one-third in favour of defendants Nos. 2 and 4. The lower Appellate Court's decree was dated the 13th July 1886. Against that decree plaintiff preferred a second appeal to the High Court, making all the defendants respondents, which appeal was, however, dismissed on the 16th June 1887. The plaintiff on the 13th June 1890 applied for execution of the decree in his favour in respect of the two-thirds of the property held to belong to him, and defendants Nos. 1 and 5 objected on the ground that the right to execution was barred, limitation running from the 13th July 1886, the date of the lower Appellate Court's decree in the plaintiff's favour. *Held* that limitation ran from the 16th June 1887, and that the application was not therefore barred. All the defendants were parties to the second appeal, and the Court to which the application was made for execution was not bound, before allowing execution, to go into all the circumstances of that appeal and consider whether the decree of the lower Appellate Court in favour of the plaintiff for the two-thirds of the property was or was not practically secure; the High Court had all the parties before it, and, if it had been right to do so, might have altered the decree against any of them. *Quere*—Whether under such circumstances the Legislature could have intended the Court executing a decree to go into questions so complicated as to whether in such a case the whole decree was or might have been or become imperilled in the Court of Appeal, and whether the plain words of art. 179 might not be followed with less of possible inconvenience and complexity, even though in some cases it might result in execution of a decree going against a defendant a little more than three years after such decree was practically secure against him. *Nundun Lall v. Rai Joykishen, I. L. R., 16 Calc., 558, cited with approval. KRISTO CHURN DASS v. RADHA CHURN KUR . I. L. R., 19 Calc., 750*

84. — *Appeal against part of decree only—Appeal dismissed—Application for execution of original decree.*—On the 26th June 1891, in a suit against seven persons who were members of a Mahomedan family, the plaintiff obtained a decree on a mortgage. The decree directed the sale of $\frac{2}{3}$ of the mortgaged property, but it exonerated

LIMITATION ACT, 1877—continued**2 PERIOD FROM WHICH LIMITATION RUNS—continued**

from liability the share of a female member (defendant No 2) of the family, which was $\frac{1}{2}$ of the whole estate. The plaintiff appealed as to the $\frac{1}{2}$ share only. He made all the defendants respondents to the appeal, but the name of the first defendant was afterwards struck out, as he could not be served with notice. His interests however, were identical with those of defendants Nos 3 to 7. On

unaffected by the appeal and that consequently the plaintiff's application for execution of that decree was barred under art 179 of the Limitation Act (XV of 1877), not having been made within three years from the 26th June 1891. Held that the application was not barred. The date of the appellate decree and not that of the original decree, was

any appeal by any party. *Per RANADE J*—Except in the case where a nominally single decree awards separate reliefs against separate defendants, the words of art 179 must be construed in their natural sense as permitting an extension of limit on where an appeal is preferred and is not withdrawn. **ABDUL RAHMAN v MAJID SAIB**

[I L R, 23 Bom, 500]

District Munsif delivered a revised judgment in

upheld by the District Court on appeal on 25th

LIMITATION ACT, 1877—continued**2 PERIOD FROM WHICH LIMITATION RUNS—continued.**

second defendant. *Per MOORE, J*—Under art 179, cl (2) of sch II of the Limitation Act it is immaterial whether some only or all of several judgment debtors prefer an appeal. There is only

decision in *Muthu v Chellappa* I L R, 12 Mad, 479, the consideration of such subtle points as whether a decree was or was not imperilled by an appeal was foreign to the intention of the Legislature. **VIRARAGHAV AYYANGAR v PONNAMMAL**
[I L R, 23 Mad., 60]

86 Application for possession and mesne profits after execution of decree is barred—A as purchaser of a decree against B applied for execution thereof and having caused five fields of B to be sold in execution, purchased four of them at the Court sale and one from an execution purchaser. On 10th July 1871, however, the High Court, in an appeal by B, held A's application for execution to have been time barred, and reversed the orders of the two lower Courts. A having been put in possession of the fields under the orders of the High Court, he applied to the High Court to have the mesne profits decreed against B. Held that the application was barred. **CHITRALAL VAJERAM**
[I L R, 1 Bom, 19]

87 Application for execution of decree—A, the judgment debtor, opposed an application made by B, the judgment creditor, for execution under a decree. This objection was

tion made by A on the 18th March 1878—Held that such application was barred under art 179, sch II, Act XV of 1877. **KRISHNA COOMAR NAG v MAHABAT KHAN**
[I L R, 5 Calc, 695]

88 Appellate order in execution—The holder of a decree for possession and partition of a share of certain immovable property, dated the 19th January 1878, applied for execution on the 2nd February 1878. An order was

LIMITATION ACT, 1877—continued.**2. PERIOD FROM WHICH LIMITATION RUNS—continued.**

the date of the proceedings. **FAEZ BUKSH CHOWDHRY v. SADUT ALI KHAN** . . . 23 W. R., 282

The contrary was held under Act XIV of 1859, s. 2.

See **RAMANUJA AYYANGAR v. VENKATA CHARRY** [4 Mad., 280

100. ——— *Application by Government for execution of decree.*—Under Act IX of 1871, Government is bound to make an application for execution within the same time as any other person. **COLLECTOR OF BLEEDHOOM v. SREEHURRY CHUCKERBUTTY** . . . 22 W. R., 512

101. ——— *Application for execution of decree—Presentation of application to enforce decree.*—Held by the Full Bench that the date on which an application for the execution of a decree is presented, and not any date on which such application may be pending, is "the date of applying" within the meaning of art. 167, sch. II of Act IX of 1871. **FAKIR MUHAMMAD v. GHULAM HUSAIN** . . . I. L. R., 1 All., 580

102. ——— *Application for execution of decree.*—If a decree has once been allowed to expire, no subsequent application, although made *bonâ fide*, can revive it. **MUNGOL PRASHAD DICHIT v. SHAMA KANTO LAHORY CHOWDHRY** [I. L. R., 4 Calc., 708

S. C. ISHANI DABIA v. GRIJA KANT LAHIRY CHOWDHRY . . . 3 C. L. R., 572

But held by the Privy Council in appeal that, although the execution of a decree may have been actually barred by lapse of time at the date of an application made for its execution, yet if an order for such execution has been regularly made by a competent Court having jurisdiction to try, whether it was barred by time or not, such order, though erroneous, must, if unreversed, be treated as valid. **MUNGOL PERSAD DICHIT v. GRIJA KANT LAHIRI**

[I. L. R., 8 Calc., 51
I. R., 8 I. A., 123; 11 C. L. R., 113

103. ——— *Admission of previous application by competent Court.*—In an application for execution of a decree, it was held that, whether rightly or wrongly, a previous application having been admitted and registered and attachment having been ordered to issue, it was not open to the judgment-debtor to question the validity of the proceedings on the ground of the execution being barred by limitation. **Mungol Pershad Dichit v. Grijā Kant Lahiri, I. L. R., 8 Calc., 51; I. R., 8 I. A., 123**, referred to. **NORENDRA NATH PAHARI v. BHUPENDRA NARAIN ROY** I. L. R., 23 Calc., 374

104. ——— *Application for execution of a decree must be made within three years of a previous application as required by Act IX of 1871, sch. II, art. 167.* **Umiashankar Lakhmiram v. Chottalal Vajeram, I. L. R., 1 Bom., 19**, held not to apply. **GIRI DHAREE SINGH v. RAM KISHORE NARAIN SINGH** . . . 1 C. L. R., 252

LIMITATION ACT, 1877—continued.**4. PERIOD FROM WHICH LIMITATION RUNS—continued.**

ABDUL HEKIM v. ASSEBUTOOLAH 25 W. R., 94
NILMONEY SINGH DEO v. RAMJEEBUN SURKEL [8 C. L. R., 335

WODOY TARA CHOWDHRAIN v. ABDUL JUBBUR CHOWDHRY . . . 24 W. R., 339

105. ——— *Civil Procedure Code (Act XIV of 1882), s. 230.*—On 15th February 1872 the plaintiff obtained against the defendant a decree for possession upon his mortgage, and in attempting to take possession was obstructed by N, another mortgagee of the defendant, whereupon the plaintiff applied for removal of the obstruction, but his application was rejected on the ground that N was in possession as mortgagee, and that the plaintiff was not entitled to possession until N's mortgage was redeemed. The plaintiff did not apply for execution any further. In 1884 the defendant paid off N's mortgage, and on 27th August 1885 the plaintiff presented an application for execution of his decree of 1872. On reference to the High Court,—Held that the execution of the decree was barred, no application for execution having been made since 1873. The previous application for execution not having been made under s. 230 of the Civil Procedure Code (Act XIV of 1882), the general law of limitation, as laid down in art. 179 of Act XV of 1877, governed the case. **ANNAJI APAJI v. RAMJI JIVAJI** [I. L. R., 10 Bom., 348

106. ——— *Application for execution made within time of a previous barred application in which execution was allowed.*—An application for the execution of a decree, though made within three years from the date of a previous application, was barred, under s. 20 of Act XIV of 1859, if the previous application were barred, even though execution was allowed to issue on such application. **GOPAL GOVIND v. GANESHDAS TEJMAL** [8 Bom., A. C., 97

107. ——— *Application for execution of decree already barred—Limitation Acts (IX of 1871), sch. II, art. 167; (XV of 1877) ss. 2, 3.*—No process can legally issue upon an application for the execution of a decree already barred by limitation, nor can an application made under such circumstances be a valid application, or one which under the Act would give the execution-creditor a fresh period of limitation. **SHUMBRUNATH SHAHA v. GURUCHURN LAHIRI** . I. L. R., 5 Calc., 894 [6 C. L. R., 437

108. ——— *Application made within three years of previous barred application—"Application in accordance with law."*—An application for execution of decree was made in 1885, and the second in 1891. The latter was at first allowed, but subsequently struck off for some default of the applicant. The third application was made in 1893. Held that the second application having been made at a time when it was barred by reason of the three years' period having been exceeded, the third was barred, though presented within three years of the

LIMITATION ACT, 1877—continued.**2. PERIOD FROM WHICH LIMITATION RUNS—continued.**See *DATA KISHOR v. NANKI BEGAM*[*I. L. R.*, 20 All., 304]**(d) WHERE THERE HAS BEEN A REVIEW.**

cl. 3.—The provision of the article where there has been a review is opposed to the decisions of *CHOWHRY JUMMENJOY MULLICK v. BISSAMHAR PANJAH*. 5 W. R., Mis., 45

GOUD MOHUN SHANHA v. GOUD MOHUN GHOSH [5 W. R., Mis., 11]

but in accordance with most of the decisions.

93. ———— *Refraction of application for review—Time during which review was pending—Application for refund of moneys levied under decree reversed on appeal.—Where a review*

quently reversed on appeal is not governed by art. 179, but by art. 178, of sch. II of the Limitation Act. *KURUPAN ZAMINDAR v. SADAMIVA*

[*I. L. R.*, 10 Mad., 68]**94. ———— Order allowing**

amendment of a decree under s. 200 of the Code of Civil Procedure is an order passed upon review of judgment within the meaning of art. 179, sch. II, cl. (3), of the Limitation Act; therefrom an application for execution of a decree within three years from such an order is not barred by limitation.

95. ———— Calculation of time

time in which any appeal may be preferred against such decrees. But where a decree is wrongly varied, a party affected by such variation should be entitled to calculate the time during which an appeal may be preferred as commencing from the date of the variation. *PANANESHAYAT v. BESHAGHATTA*

[*I. L. R.*, 22 Mad., 364]**LIMITATION ACT, 1877—continued.****2. PERIOD FROM WHICH LIMITATION RUNS—continued.**

98. ———— *Order amending decree—Compromise after decree—Subsequent application for execution of amended decree.—After a*

the suit, and the decree had been made and affirmed on appeal to the High Court, jointly and severally against the first three and conditionally against the fourth. An application by the second and third defendants for leave to appeal to Her Majesty was withdrawn, the two parties to the compromise having obtained an order for amendment of the decree in its terms. For the execution of the decree against the three defendants, other than the third, as to the proportionate part of the property sued for, and not the subject of the compromise,

promise was beyond the powers of the High Court, and was without operation either in favour of or against those defendants who had not been parties to the petition for that amendment. *Held* also on

stayed any compromise in suit of *CHOWHRY JUMMENJOY MULLICK v. BISSAMHAR PANJAH* who was a party to it, except for the purpose of enforcing it against him. *KOTAGHIRE VENKATA SUBBAMMA RAO v. VELLANKI VENKATARAMA RAO*

[*I. L. R.*, 24 Mad., 1][*I. L. R.*, 27 I. A., 187]

4 C. W. N., 725]

(c) WHERE PREVIOUS APPLICATION HAS BEEN MADE.

97. ———— cl. 4—*Decree not liable to be enforced.—S. 29, Act XIV of 1859, was not applicable to a decree with the liability under it has become enforceable by process of execution.* *GOPALA SETHY v. DAMODARA SETHY* 4 Mad., 173

98. ———— *Application for execution of decree—"Sut."—Per GARTH, C.J., and MARSHY and AINSLIE, JJ. (KEMP and MACPHERSON, JJ. dissent.)*

99. ———— *Application to execute decree.—Where an application was made and proceedings taken to enforce or keep in force a decree, limitation runs from the date of such application, not from*

LIMITATION ACT, 1877—continued.**3. NATURE OF APPLICATION—continued.**

TARUCK CHUNDER CHUCKERBUTTY v. HURO
CHUNDER CHUCKERBUTTY . . . 15 W. R., 473

RAJ COOMAR BABOO v. JUDOO BUNGSHIEE
[14 W. R., 112]

AMBER ALI v. SAHIB SINGH . . . 15 W. R., 530

IN THE MATTER OF KALEEDASS GHOST
[15 W. R., 356]

KISTO KANT BURAL v. NISTARINEE DEBIA
[8 W. R., 268]

In judging of the *bonâ fides* of proceedings to obtain execution of a decree, the whole course of those proceedings was to be regarded. The fact that unexplained delays have occurred during the proceedings in execution of the decree, or that some of the proceedings were ineffectual, is not necessarily evidence of a want of *bonâ fides*. BENODERAM SEN v. BROJENDRO NARAIN ROY

[13 B. L. R., P. C., 169; 21 W. R., 97]

S. C. in lower Court, BROJENDRO NARAIN ROY v. BENODE RAM SEIN . . . 11 W. R., 269

Under the present Act, no question of *bonâ fides* arises.

131. ————— *Sufficiency or otherwise of mere applications—Act XIV of 1859, s. 20.*—Under Act XIV of 1859, there were contrary decisions as to whether a mere application for execution was a proceeding to enforce the decree. Cases which held it insufficient were—

CHUNDER COOMAR ROY v. SHURUT SOONDERY DEBIA . . . 6 W. R., Mis., 37

GOSSAIN GOPAL DUTT v. COURT OF WARDS
[21 W. R., 418]

IDOO v. BESHAROOOLA . . . 2 W. R., Mis., 10

RAJ BULLOB BUYE v. TABANATH ROY
[3 W. R., Mis., 2]

SHEO PERTAB LAL v. ISSUR ROY
[5 W. R., Mis., 23]

See also ABDOL HAKIM v. ASEENTOOOLAH
[25 W. R., 94]

Contra, GOUR MOHAN BANDOPADHYA v. TARA CHAND BANDOPADHYA

[3 B. L. R., Ap., 17; 11 W. R., 567]

VARADA CHETTY v. VAIXAPURY MUDALI
[4 Mad., 151]

LUCHMUN SINGH v. NARAIN . . . 2 N. W., 185

CHUMUN BHUGUT v. MUDUN MOHAN
[2 N. W., 186]

HUR SAHOY SINGH v. GOBIND SAHOY
[21 W. R., 244]

See also TABBUR SINGH v. MOTEE SINGH
[9 W. R., 443]

MAHOMED BAKER KHAN v. SHAM DEY KOIR
[12 W. R., 2]

RAJEEB LOOHUN SAHA CHOWDHRY v. MASEYK
[18 W. R., 193]

LIMITATION ACT, 1877—continued.**3. NATURE OF APPLICATION—continued.**

An application for execution of a decree followed by issue of notice was held to be a proceeding to keep alive the decree. LUCKEE NARAIN CHUCKERBUTTY v. RAM CHAND SIRCAR . . . 6 W. R., Mis., 63

SHOO CHAND CHUNDER v. GRANT 7 W. R., 10

An application by a decree-holder for issue of notice and for enforcement of the decree by possession was held to be a proceeding to keep the decree in force. MOOKTA KASHEE DABEE v. GUNGA DASS ROY . . . 14 W. R., 483

Also an application for execution, and order to deposit tullubana followed by such deposit, and service of notice, was sufficient. TELLOCHUN CHATTERJEE v. RADHAMONI DOSSEE . . . 6 W. R., Mis., 74

132. ————— and s. 19—*Execution of decree, Application for.*—The mere payment of a Court-fee in connection with execution proceedings, with a view to obtain leave to bid for property then up for sale in execution of a decree, does not constitute "the taking of some step in aid of execution" within the meaning of art. 179, sch. II of the Limitation Act (Act XV of 1877), so as to prevent the execution of the decree being barred within three years from the date of such payment. TOREE MAHOMED v. MAHOMED MABOOD BUX

[I. L. R., 9 Calc., 730; 13 C. L. R., 91]

133. ————— *Application made to keep in force decree.*—A judgment-creditor, on finding that his judgment-debtor has no property on which he can lay hands for the purposes of execution, can always file an application simply to keep in force his decree. NILMONY SINGH DEO v. NILCOMUL TUFFADAR . . . 25 W. R., 546

134. ————— *Nature of application under s. 179, cl. 4, of the Limitation Act, 1877.*—To satisfy the requirements of art. 179 (4) of sch. II of the Limitation Act (XV of 1877), there must be an application to the proper Court, and time runs from the date of the application, and not of the order made upon it. The application need not, however, necessarily be in writing; where the law does not require a writing, an oral application satisfies its requirements. Where an order made in aid of execution is of such a nature that the Court would not have made it without an application by the judgment-creditor, it may be presumed that due application had been made for it. THIMBAK BEPIGI PATVARDHAN v. KASHINATH VIDYADHAR GOSAVI

[I. L. R., 22 Bom., 722]

135. ————— *Civil Procedure Code, ss. 231, 232, 623—Joint decree-holders—Assignment by operation of law of a share in a decree.*—A Hindu obtained in 1878 a decree for partition of certain property, and he now applied in 1888 to have it executed. He relied in bar of limitation on an application for execution made by his son, who had obtained a decree against him in 1841 in a partition suit, whereby his right was established to one-fifth of whatever should be acquired by the father by virtue of the decree of 1878. The father's application for execution in 1888 was held to be barred

LIMITATION ACT, 1877—continued**2 PERIOD FROM WHICH LIMITATION RUNS—continued**

second The phrase "in accordance with law" in art. 179 of the Limitation Act was adjectival not only to the words "to the proper Court for execution," but also to the words "to take some step in execution" **BHAGWAN JETHIRAM v DHONDI**

[I L R., 22 Bom., 83]

109 ————— Decree for possession and means profits reversed as to possession—Decree

—Held on review, reversing a previous order that the defendant's application was not barred by limitation **JEDDI SUBEAYA VENKATESH SHANDAG v RAMRAO RAM CHANDRA MURDISHYAR**

[I L R., 32 Bom., 998]

110 ————— Time runs from

time, the three years' period of limitation should be computed from the 11th January 1893 that is the date when the application was made and not from the 3rd of March when the application was heard and order made **Luchmee Bakesh Roy v Runjeet Ram Pandey**, 13 B L R., 177 **Fakir Muhammed v Ghulam Hossain** I L R. 1 All 680 referred to **SARAT KUMARY DASGI v JAGAT CHANDRA FOY**

[I C W. N., 280]

111 ————— Execution of decree

112. ————— Application within time—Where a Judge finds that an application for execution is within time, and there is no appeal from

LIMITATION ACT, 1877—continued**2 PERIOD FROM WHICH LIMITATION RUNS—continued**

his finding, his successor is not justified in going behind his order **DHEERAJ MANTAN CHUND v MOOLBHEEDUR GHOSH** 15 W R., 87

113 ————— Suit on decree—Steps to enforce decree—The plaintiff sued to recover ar-

quent to the date of the decree **JAI CHAND v BEHARI** 7 N. W., 177

114 ————— Application for execution of decree—Application for execution of a decree obtained in 1838 under the old law as to limitation was made in January and disposed of in February 1864 and a subsequent application was made in November 1867 **Held** that the first application was in time, but the second application was barred by s 20, Act XIV of 1859 **VARAHNADRA RAO v RAMAIVA alias BARPATULA**

[4 Mad., 148]

115 ————— Obligation to show

[8 W R., Mis., 20]

KOOL CHUNDER CHUCKERBUTTY v KUMUL CHUNDER ROY 8 W R., Mis., 17

116 ————— Application within time—An application made on the 8th January 1875 to execute a decree the first preceding application having been made on the 8th January 1872 was held to be within the time allowed by art 16, sch II of Act IX of 1871 **DHOVESUR KOOL v ROY GOODEE SANY** I L R., 2 Calc., 336

(F) DECREES FOR SALE

117. ————— Decree for sale on a mortgage—Order absolute for sale—Transfer of Property Act (IV of 1882), s 89 and 69—The per-
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order the decree cannot be executed, and not from the date of the decree itself **Oudd Behari Lal v Nageshar Lal**, I L R., 13 All., 278 and **Mulchand v Mukta Pal Singh**, Weekly Notes, All (1896), 100, referred to **MAHABIR PRASAD v SITAL SINGH** I L R., 19 All., 520

118 ————— Decree for sale on mortgage—Order absolute for sale—Transfer of Property Act (IV of 1882), s 89—An application for an order absolute for sale under s 89 of the Transfer of Property Act, 1882, is an application to

LIMITATION ACT, 1877—continued.**3. NATURE OF APPLICATION—continued.**

TARUCK CHUNDER CHUCKERBUTTY v. HURO
CHUNDER CHUCKERBUTTY . 15 W. R., 473

RAJ COOMAR BABOO v. JUDOO BUNGSHEE
[14 W. R., 112]

AMEER ALI v. SAHIB SINGH . 15 W. R., 530

IN THE MATTER OF KALLEEDASS GHOSE
[15 W. R., 358]

KISTO KANT BURAL v. NISTARINEE DEBIA
[8 W. R., 268]

In judging of the *bond fides* of proceedings to obtain execution of a decree, the whole course of those proceedings was to be regarded. The fact that unexplained delays have occurred during the proceedings in execution of the decree, or that some of the proceedings were ineffectual, is not necessarily evidence of a want of *bond fides*. BENODERAM SEN v. BROJENDRO NARAIN ROY

[13 B. L. R., P. C., 169 : 21 W. R., 97]

S. C. in lower Court, BROJENDRO NARAIN ROY v. UNDER RAM SEIN . 11 W. R., 269

Under the present Act, no question of *bond fides* arises.

131. ————— *Sufficiency or otherwise of mere applications—Act XIV of 1859, s. 20.*
—Under Act XIV of 1859, there were contrary decisions as to whether a mere application for execution was a proceeding to enforce the decree. Cases which held it insufficient were—

CHUNDER COOMAR ROY v. SHURUT SOONDERY DEBIA . 6 W. R., Mis., 37

GOSAIN GOPAL DUTT v. COURT OF WARDS
[21 W. R., 418]

IDOO v. BESHAROOOLA . 2 W. R., Mis., 10

RAJ BULLOB BUYE v. TARANATH ROY
[3 W. R., Mis., 2]

SHEO PERTAB LAL v. ISSUR ROY
[5 W. R., Mis., 23]

See also ABDOOL HEKIM v. ASEINTOOLLAN
[25 W. R., 94]

Contra, GOUR MOHAN BANDOPADHYA v. TARA CHAND BANDOPADHYA
[3 B. L. R., Ap., 17 : 11 W. R., 567]

VARADA CHETTY v. VAIXAPURY MUDALI
[4 Mad., 151]

LUOHMUN SINGH v. NARAIN . 2 N. W., 165

CHUMUN BHUGUT v. MUDUN MOHAN
[2 N. W., 186]

HUR SAHOY SINGH v. GOBIND SAHOY
[21 W. R., 244]

See also TADBUR SINGH v. MOTEE SINGH
[9 W. R., 443]

MAHOMED BAKER KHAN v. SHAM DEX KOER
[12 W. R., 2]

RAJEEB LOOHUN SAHA CHOWDHRY v. MASEKK
[18 W. R., 193]

LIMITATION ACT, 1877—continued.**3. NATURE OF APPLICATION—continued.**

An application for execution of a decree followed by issue of notice was held to be a proceeding to keep alive the decree. LUCKEE NARAIN CHUCKERBUTTY v. RAM CHAND SIRCAR . 6 W. R., Mis., 63

SHOO CHAND CHUNDER v. GRANT 7 W. R., 10

An application by a decree-holder for issue of notice and for enforcement of the decree by possession was held to be a proceeding to keep the decree in force. MOOKTA KASHEE DABEE v. GUNGA DASS ROY . 14 W. R., 483

Also an application for execution, and order to deposit tulubana followed by such deposit, and service of notice, was sufficient. TRILOCHUN CHATTERJEE v. RADHAMONI DOSSEE . 6 W. R., Mis., 74

132. ————— and s. 19—*Execution of decree, Application for.*—The mere payment of a Court-fee in connection with execution proceedings, with a view to obtain leave to bid for property then up for sale in execution of a decree, does not constitute "the taking of some step in aid of execution" within the meaning of art. 179, sch. II of the Limitation Act (Act XV of 1877), so as to prevent the execution of the decree being barred within three years from the date of such payment. TOREE MAHOMED v. MAHOMED MAHOOD BUX

[I. L. R., 9 Calc., 730 : 13 C. L. R., 91]

133. ————— *Application made to keep in force decree.*—A judgment-creditor, on finding that his judgment-debtor has no property on which he can lay hands for the purposes of execution, can always file an application simply to keep in force his decree. NILMONEY SINGH Dro v. NILMOL TUFFADAR . 25 W. R., 546

134. ————— *Nature of application under s. 179, cl. 4, of the Limitation Act, 1877.*—To satisfy the requirements of art. 179 (4) of sch. II of the Limitation Act (XV of 1877), there must be an application to the proper Court, and time runs from the date of the application, and not of the order made upon it. The application need not, however, necessarily be in writing; where the law does not require a writing, an oral application satisfies its requirements. Where an order made in aid of execution is of such a nature that the Court would not have made it without an application by the judgment-creditor, it may be presumed that due application had been made for it. TRIMBAK BEBIGI PATYARDHAN v. KASHINATH VIDYADHAR GOSAVI

[I. L. R., 22 Bom., 723]

135. ————— *Civil Procedure Code, ss. 231, 232, 623—Joint decree-holders—Assignment by operation of law of a share in a decree.*—A Hindu obtained in 1874 a decree for partition of certain property, and he now applied in 1885 to have it executed. He relied in bar of limitation on an application for execution made by his son, who had obtained a decree against him in 1841 in a partition suit, whereby his right was established to one-fifth of whatever should be acquired by the father by virtue of the decree of 1874. The father's application for execution in 1888 was held to be barred

LIMITATION ACT, 1877—continued

3 NATURE OF APPLICATION—continued

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decrees) the application by the transferee of the decree, having been an application in accordance with law, was sufficient to keep the decree alive *RAMASAMI v ANDA PILLAI*
I L R, 14 Mad., 252

Reversing on review the decision in *RAMASAMI v. ANDA PILLAI* *I L R, 13 Mad, 347*

136 ———— *Civil Procedure Code (Act XIV of 1882), ss 232-248—Application for execution by transferee of decree—Benami-dar—*The words 'in accordance with law' in art 179 of sch II of the Limitation Act mean in accordance with the law relating to execution of decrees Under s. 232 of the Civil Procedure Code, the Court executing the decree after giving notice to the decree holder and judgment debtor and hearing their objections if any has an absolute discretion to allow or to refuse to allow execution to proceed if a decree has been

Chuckerbutty v Lalit Coomar Gangopadhyay, 1882 and Gour Sundar Lahiri v

a decree was made to be made in accordance with art 179 of sch II of the Limitation Act *BALESHAN DAS v BUDMATI KOER* *I L R, 20 Calc, 388*

See *MANIKAM v TATAYYA*

137. ———— *Application in accordance with law—Succession Certificate Act (VII of 1889) s 4—Application for execution by legal representative of decree holder without certificate—*An application for execution of a decree made by the legal representatives of a deceased decree-holder, without the production of a certificate

LIMITATION ACT, 1877—continued

3 NATURE OF APPLICATION—continued.

under the Succession Certificate Act (VII of 1889), is nevertheless one made in accordance with law within the meaning of art 179 cl 4 of the Limitation Act (XV of 1877) *BALESHAN SINGH BAKAS v WAGARSING* *I L R, 20 Bom, 76*

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within the meaning of the Act, and that therefore the application of the 13th September 1890 was not barred *HAFIZUDDIN CHOWDHRY v ABDUL AZIZ*

I L R, 20 Calc, 755

139 ———— *Application for restoration under a decree—Civil Procedure Code (1882) s 583—Period of limitation—Applications*

(b) IRREGULAR AND DEFECTIVE APPLICATIONS

140 ———— *Irregular application for restoration of execution case—Where*
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141 ———— *Application for restoration of decree irregularly made—Where an*

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LIMITATION ACT, 1877—continued.**3. NATURE OF APPLICATION—continued.**

directed to do, in support of his claim, it was held not to be a proceeding properly taken to enforce a decree. *ODOYCHAND LUSKUR v. NOBOCOMAR PORAMANTICK* [10 W. R., 428]

142. ————— Civil Procedure

Code, 1859, s. 212—Application to execute decree.—Under Act IX of 1871, sch. II, art. 167, an application for executing a decree is not a proper one unless it is in accordance with the Code of Civil Procedure, s. 212. *Quare*—What is the effect of that Act upon the High Court's decision as to the *bona fides* of proceedings to keep a decree in force? *GOUREE SUNKUR TRIBEDEE v. AMAN ALI CHOWDHRY* [21 W. R., 309]

143. ————— Application for execution of decree—Proceeding to enforce decree.—The "application" spoken of in art. 167, cl. 4, of sch. II to Act IX of 1871 is not merely such an application as is contemplated by s. 212 of Act VIII of 1859, but includes an application to keep in force a decree or order. The language of art. 167, cl. 4, of sch. II to Act IX of 1871 is wide enough to include any application to enforce or keep in force decrees or orders, and consequently an application to enforce or keep in force a decree by the attachment of a portion of the property of the defendant will keep the decree alive against the residue of his property or his person. An order for attachment of a pension in satisfaction of a decree, obtained on the 10th December 1863, was made on 16th April 1869. After the passing of the Pensions Act (XXII of 1871), the Deputy Collector refused to continue paying the pension to the decree-holder, and returned to the Court the warrant of execution issued under the order of 16th April 1869; and an order, finally disposing of the application for attachment, was made on 14th June 1872. On 29th June 1872 the decree-holder presented a fresh application, praying that the attachment of the pension might be continued, and a letter be written to the Collector, directing him to continue to pay the pension to the decree-holder, as directed by the order of 16th April 1869. *Held* that such last-mentioned application came within cl. 4 of art. 167 of sch. II to Act IX of 1871, and that consequently an application, on 24th July 1874, for execution of the decree of 10th December 1863 was not barred. *Held* also that the decree might properly be enforced against property of the defendant, mentioned in the application of 1874, other than the property mentioned in the applications of 1869 and 1872. *JAMNA DAS v. LALITRAM*

I. L. R., 2 Bom., 294

144. ————— "Applying to enforce the decree"—Application "to keep the decree in force"—Act VIII of 1859, s. 212.—The words "applying to enforce the decree" in Act IX of 1871, sch. II, art. 167, mean the application (under s. 212, Act VIII of 1859, or otherwise) by which proceedings in execution are commenced, and not applications of an incidental kind made during the pendency of such proceedings. In cases governed by Act IX of 1871, a decree-holder who has applied to the

LIMITATION ACT, 1877—continued.**3. NATURE OF APPLICATION—continued.**

Court *simpliciter* "to keep the decree in force" may, within three years from the date of such last-named application, obtain execution of his decree. *CHUNDER COOMAR ROY v. BHOGOBUTTY PROSONNO ROY*

[I. L. R., 3 Cal., 235; 1 C. L. R., 23]

PRABHACARAROW v. POTANNAH

[I. L. R., 2 Mad., 1]

145. ————— Application for execution of decree—Non-compliance with provision of Civil Procedure Code, 1877, s. 235.—An application for execution of a decree which does not comply in every particular with the requirements of s. 235 of the Code of Civil Procedure, and which, having been returned to the judgment-creditor for amendment, has not been proceeded with, may still suffice, under cl. 4, art. 179 of sch. II of the Limitation Act, to keep the decree alive. *RAMANANDAN CHETTI v. PERIATAMBI SHERVAI*

[I. L. R., 6 Mad., 250]

146. ————— Formal defect in application for execution—Application not in accordance with s. 235 (f) of the Civil Procedure Code.—On an application for execution of a decree it appeared that the only previous application for execution which had been made within a period of three years had been defective, by reason of its not containing the particulars required by Civil Procedure Code, s. 235 (f), and had been returned for amendment, but had not been amended. *Held* that the present application was not barred by limitation. *RAMA v. VARADA*

[I. L. R., 16 Mad., 142]

147. ————— Proceedings to keep alive decree—Irregularities.—Proceedings in execution originating in illegality, and which have been the subject of contests by the judgment-debtor, and are still under consideration in appeal, cannot be regarded as *bona fide* proceedings to keep alive the decree. *TILUCK CHUNDER GOOHO v. GOURMONEE DEBEE* 6 W. R., Mis., 81

But see *GOURMONEE DEBEE v. NEPL MADHUB GOOHO* 5 W. R., Mis., 3

148. ————— Application for execution of decree.—An application for execution of a decree was made in February 1868, and proceedings sufficient to bar limitation under Act XIV of 1859 were going on till 30th September 1871. The next application for execution of the decree, made in October 1872, was held to be barred under Act IX of 1871, as more than three years had elapsed on that day from the date of the application in February 1868. *Held*, following *Gouree Sunker v. Arman Ali*, 21 W. R., 309, that an informal application, made on 30th September 1871, in the nature of a petition to the Subordinate Judge to give effect to the application of February 1868 by overruling certain objections of the Collector and enforcing execution of the decree, was not an application for the execution of a decree such as could bar limitation under Act IX of 1871. *JIBHAI MATHIRPATI v. PARHNU BAPU* I. L. R., 1 Bom., 59

LIMITATION ACT, 1877—continued.

3 NATURE OF APPLICATION—continued.

decrees) the application by the son for execution as transferee of part of the decree, having been an application in accordance with law, was sufficient to keep the decree alive *RAMASAMI v. ANDA PILLAI* [I. L. R., 14 Mad., 252]

Reversing on review the decision in *RAMASAMI v. ANDA PILLAI* . . . I. L. R., 13 Mad., 347

138. ———— *Civil Procedure Code (Act XIV of 1892), s. 252, 218—Application for execution by transferee of decree—Benamidar.*—The words "in accordance with law" in art 179 of sch II of the Limitation Act mean in accordance with the law relating to execution of decrees

supposed it may, has an absolute discretion to allow or to refuse to allow, execution to proceed at the instance of a person to whom a decree has been transferred by an assignment in writing When

which they are based are in accordance with law as between such transferee and the judgment-debtor, although he may be merely a benamidar, and such proceedings and application if made in proper time, are sufficient to keep the decree alive *Denonath Chuckerbutty v. Lalit Coomar Gangopadhyaya*, I L R., 9 Cal., 633 and *Gour Sundar Lahiri v. Hem Chander Choudhry*, I L R., 16 Cal., 355, distinguished *Akbar Ezzam v. Chukhan*, 5 C L R., 253, referred to *Purna Chandra Roy v. Abhaya Chandra Roy*, 4 B L R., App 40, and *Nadir*

See *MANIKRAM v. TATAYIA*

[I. L. R., 21 Mad., 388]

137. ———— *Application in accordance with law—Succession Certificate Act (VII of 1889) s. 4—Application for execution by legal representative of decree holder without certificate.*—An application for execution of a decree made by the legal representatives of a deceased decree holder, without the production of a certificate

LIMITATION ACT, 1877—continued

3 NATURE OF APPLICATION—continued.

under the Succession Certificate Act (VII of 1889), is nevertheless one made "in accordance with law" within the meaning of art 179, cl 4, of the Limitation Act (XV of 1877) *BALKISHAN SHUKLA BAKAS v. WAGARSING* . . . I. L. R., 20 Bom., 78

138. ———— *Application in accordance with law—Civil Procedure Code (Act XIV of 1892), s. 252, 218—Succession Certificate Act (VII of 1889), s. 4, cl b and (iii).*—On the 10th January 1896 the heirs of a deceased decree-holder (who herself had last applied for execution on the 19th

within the meaning of art 179, cl 4 of the Limitation Act, and that therefore the application of the 13th September 1890 was not barred *HAFIZUDDIN CROWDHRY v. ABDUL AZIZ*

[I. L. R., 20 Cal., 755]

139. ———— *Application for restitution under a decree—Civil Procedure Code (1892), s. 583—Period of limitation.*—Applications made to obtain restitution under a decree in accordance with Civil Procedure Code, s. 583, are proceedings in execution of that decree, and are governed by the Limitation Act, sch II art 179 *VENKATIA v. RADAVACHALU* I. L. R., 20 Mad., 448

(b) IRREGULAR AND DEFECTIVE APPLICATIONS

140. ———— *Irregular application for restoration of execution case—Where*

Proceedings

141. ———— *Application for execution of decree irregularly made.*—Where an application for execution of a decree was defective in regard to many particulars required by the terms of s. 212, Act VIII of 1858, and asked also for execution of a share only of the decree, it was held not to be an application under Act XIV of 1877, and was rejected on account of the applicant's failure to produce evidence, as he was

LIMITATION ACT, 1877—continued.**3. NATURE OF APPLICATION—continued.**

August, after filing the list, applied for the attachment and sale of such properties. The judgment-debtor contended that execution was barred by limitation. *Held* that the omission to file on the 8th July the list describing specifically the properties sought to be attached, as a mere defect of description which could be remedied under s. 245 of the Code of Civil Procedure by allowing an amendment to be made; and further that the two applications of the 8th and 24th July should be considered as one entire application dating from the date of the 8th July. *Mahomed v. Alrdoolah*, 12 C. L. R., 279, followed. *MacGregor v. Tahini Churn Sincar*

[I. L. R., 14 Calc., 124

See the Full Bench case of *Asgar Ali v. Troilokya Nath Ghose* I. L. R., 17 Calc., 631

159. ————— Defective application returned for amendment—Civil Procedure Code (1882), ss. 235 and 245.

In execution of a decree, the judgment-debtor's property was put up to sale on the 16th December 1890, but no sale took place, and the case was struck off. On the 7th October 1893, an application for execution was presented, but all the particulars required under s. 235 of the Civil Procedure Code not having been given, the application was returned to the decree-holder for amendment under s. 245, and a week's time, from 30th October, was allowed for the purpose. The amended application was not put in within the time fixed, but on the 10th January 1894 a fresh application was presented in due form with the application of the 7th October 1893, attached thereto. *Held* the application of the 7th October 1893 was not made "in accordance with law" within the terms of art. 179 (4), sch. II of the Limitation Act (XV of 1877), and the execution was barred by limitation. *Kifayat Ali v. Ram Singh*, I. L. R., 7 All., 359; *Pirjade v. Pirjade*, I. L. R., 6 Bom., 681; *Asgar Ali v. Troilokyanath Ghose*, I. L. R., 17 Calc., 631, referred to. *Syud Mahomed v. Syud Abedoolah*, 12 C. L. R., 279, distinguished. *Fuzloor Rahman v. Altaf Hossein*, I. L. R., 10 Calc., 541, commented on. *Rama v. Varada*, I. L. R., 16 Mad., 142, and *Ramanadan v. Periatambi*, I. L. R., 6 Mad., 250, dissented from. *Gopal Sahi v. Janki Koer* I. L. R., 23 Calc., 217

160. ————— Application for execution of decree not materially defective—Application returned for amendment—Code of Civil Procedure (Act XIV of 1882), ss. 235 and 248.—The plaintiff obtained a joint decree against defendants for possession of immovable property and damages on 21st May 1886. Against that decree all the defendants except defendant No. 1 appealed, and on 2nd July 1887 so much of the decree was reversed as made the appealing defendants liable for damages, but was affirmed in all other respects. A second appeal by the plaintiff from the decree of the Appellate Court was dismissed by the High Court on 9th July 88. An application for execution of the decree was made by the plaintiff on 7th July 1891 within three years from the date of the final decree, dated 9th July 1888. The prayer was for issue of

LIMITATION ACT, 1877—continued.**3. NATURE OF APPLICATION—continued.**

notice on the judgment-debtor for delivery of possession, for attachment and sale of certain immovable properties, for realization of costs and damages decreed. Notice under s. 248 of the Code of Civil Procedure was issued on the judgment-debtors on 8th September 1891. The judgment-debtors objected that, as the application did not contain the right number of suit and date of decree, it was not in accordance with law, and as no other application had been made within three years from date of decree, the execution was barred by limitation. *Held* that material defects only could vitiate an application, and as the defects in the present application for execution were not material, it was not barred by limitation. *Asgar Ali v. Troilokya Nath Ghose*, I. L. R., 17 Calc., 631, and *Gopal Shah v. Janki Koer*, I. L. R., 23 Calc., 217, distinguished. *Gopal Chundra Manna v. Gosain Das Kalay*

[I. L. R., 25 Calc., 594

2 C. W. N., 558

161. ————— Application for execution giving wrong date of decree—Amendment allowed after limitation—Amendment relating back to former applications.—I obtained a decree on two mortgage-bonds on the 25th November 1885. That decree was set aside, but another decree was passed in his favour on the 21st of September 1886. The decree-holder made several applications to execute the decree, but in each described the decree as of the 25th November 1885. On the third application the judgment-debtor objected that the application was time-barred. The application was allowed to be amended, but the amendment took place after the expiry of limitation. *Held* that the amendment would relate back to the preceding applications, and execution of the decree was not time-barred. *Ajudhia Ram v. Muhammad Munir*, *Weekly Notes*, All., 1893, p. 112, followed. *Jiwar Dube v. Kali Charan Ram*

[I. L. R., 20 All., 478.

162. ————— Application in accordance with law.—In execution of a decree, dated 7th May 1877, an application was made under a general power-of-attorney from A and B, the decree-holders, on the 19th February 1878. B died on the 12th February, but this fact was unknown to the pleaders who made the application. The next application was made on the 28th July 1880. On an objection taken that the latter application was barred by limitation, on the ground that the former application was a void application, *Held* that the application of the 19th February 1878 was an application in accordance with law within the meaning of cl. 4, art. 179, sch. II of the Limitation Act, XV of 1877. *Amirunnissa Chowdhrani v. Ansabullah Chowdhri* 13 C. L. R., 18

163. ————— Execution of decree—Amendment of revenue record—Application for execution not "in accordance with law."—The holders of a decree made by a Civil Court, which directed, *inter alia*, that they should be maintained in possession of a share of a village, by cancellation of

LIMITATION ACT, 1877—continued.**3 NATURE OF APPLICATION—continued.**

149 ——— *Application for execution*—A *bond fide* application for execution held to be a proceeding within the meaning of s 20 Act XIV of 1859 even though it had to be amended by order of Court. **MAHOMED SAMER BHOTA v ALAHER BUKSH CHOWDHRY** 10 W. R., 348

150 ——— *Proceedings to keep decree in force*—Application for execution and notice—An application for execution was made by a mooktear and admitted by the Judge, who ordered a notice to issue to the judgment debtor. Held that the application was a proceeding within the meaning of s 20 of the Act. **I. L. R., 12 All., 64**

151 ——— *Application for execution insufficiently stamped*—An insufficiently-stamped application for execution of a decree may, under s 179 of sch II of the Limitation Act, 1877, suffice to keep the decree alive. **RAMASAMI AYYAR v SESHAYANGAR** I. L. R., 8 Mad., 181

152 ——— *Failure to produce*—An application for execution of a decree was made by the plaintiff, who produced the decree and the application as required by s 179 of sch II of the Limitation Act, 1877. The defendant failed to produce the decree and the application as required by s 179 of sch II of the Limitation Act, 1877. The plaintiff was ordered to execute the decree. **I. L. R., 12 All., 64**

the application was made by the plaintiff, who produced the decree and the application as required by s 179 of sch II of the Limitation Act, 1877. The defendant failed to produce the decree and the application as required by s 179 of sch II of the Limitation Act, 1877. The plaintiff was ordered to execute the decree. **I. L. R., 12 All., 64**

See **LAKSHAMMA v VENKATABAGAYA CHARIAR** [4 Mad., 80]

153 ———

in time, and that no question of *bond fide* arose in the case. **MARACHO KOOZE v CHUDOBHOOS SANY** 24 W. R., 489

154 ——— *Application under*—An application for execution of a decree was made by the plaintiff, who produced the decree and the application as required by s 179 of sch II of the Limitation Act, 1877. The defendant failed to produce the decree and the application as required by s 179 of sch II of the Limitation Act, 1877. The plaintiff was ordered to execute the decree. **I. L. R., 12 All., 64**

of a third person, and within three years from the date of such application a subsequent

LIMITATION ACT, 1877—continued.**3 NATURE OF APPLICATION—continued.**

155 ——— *Application "in accordance with law"*—Civil Procedure Code, s 311—Transfer of Property Act (IV of 1892), s 99—The application for execution of a decree "in accordance with law" in Act applying to which by la

of the Transfer of Property Act IV of 1892 were not applications "in accordance with law" within the meaning of art 179 (4) of sch II of the Limitation Act. **CHATTAR v KHWAL SINGH** [I. L. R., 12 All., 64]

156 ——— *Application for execution of decree—Omission to specify mode of execution—Application to wrong Court*—A bare request in an application for the execution of a decree that the amount of the decree might be recovered, without specifying the mode of execution, is not an application for execution of a decree. **I. L. R., 12 All., 64**

157 ——— *Informal application for execution of decree*—An application for execution of a decree having been made on the 26th September 1879 within time, but not in the form prescribed by the Civil Procedure Code, the Court

could not be treated as a nullity, but must though informal, be taken as a step in execution. **MAHOMED v ABDOLLAH** 12 C. L. R., 279

158 ——— *Omission to describe the property to be attached*—Civil Procedure Code, 1892 s 245—Limitation—A decree holder, on the 5th July 1885, applied for execution of a decree dated the 10th July 1873 omitting to set out the

properties, and on the 7th

LIMITATION ACT, 1877—continued.

3. NATURE OF APPLICATION—continued.

the 22nd June 1881, the widow of A, who had taken out probate, applied to withdraw this money from Court, and on the 1st of April 1882 applied for a copy of the decree obtained by A for the purposes of execution. At the time of these three applications the widow had not applied for substitution of her name on the record in the place of her deceased husband. On the 5th January 1884 the widow applied to have her name substituted on the record, and for execution. *Held* that the application was barred, as the previous applications were not, under the circumstances, steps in aid of execution. **GUNGA PERSHAD BHOOMICK v. DEBI SUNDARI DABEA**—

[I. L. R., 11 Cal., 227]

169. — *Applications for execution made without any representative of the deceased judgment-debtor being brought on to the record—Civil Procedure Code (1882), ss. 234 and 248.*—Applications for the execution of a decree made after the death of the judgment-debtor, and without either any representative of the judgment-debtor being brought upon the record, or there being any subsisting attachment of the property against which execution is sought, are not good applications for the purpose of saving limitation. **Sheo Prasad v. Hira Lal, I. L. R., 12 All., 440**, distinguished. **MADHO PRASAD v. KESHO PRASAD**

[I. L. R., 19 All., 337]

170. — *Application for execution against wrong person—Decree against a minor—Application for execution against minor's mother personally, but not as his guardian.*—On the 31st July 1879 a decree was passed against N, a minor, represented by his mother and guardian C. In December 1880 the first application for execution was made. Through mistake execution was sought against C herself as 'widow of B,' and not as guardian of the minor N. That application was granted, and certain property belonging to the minor was attached. On the 29th November 1883 the second application for execution was made against the minor as represented by his guardian C. The present application for execution was made on the 3rd December 1884. This application was rejected as time-barred by the District Court on appeal, on the ground that the first application, having been made against a wrong person, could not be taken into account; that therefore it could not keep the decree alive, and that the present application was barred. *Held*, reversing the decision of the lower Court, that the decree-holder ought not to be deprived of the fruit of his decree on account of a technical defect in his application of 1880. The minor was substantially and for all practical purposes represented by his mother. **HARI v. NARAYAN** . . . I. L. R., 12 Bom., 427

171. — *Application for relief outside the decree—"Step in aid of execution."*—The application for execution contemplated in clause (4) of art. 179 of sch. II of the Limitation Act (XV of 1877) must be one made in accordance with law, and asking to obtain some relief given by the decree, and to obtain it in the mode that the law permits. A

LIMITATION ACT, 1877—continued.

3. NATURE OF APPLICATION—concluded.

decree provided that the defendant should pay the plaintiff Rs156 within one month, and that, on receipt of this sum, the plaintiff should execute a deed of sale to the defendant. The decree was dated 29th January 1881. The first application for execution was made on the 24th January 1884, but dismissed for plaintiff's default. The plaintiff made a second application, dated 22nd January 1887, praying to be put in possession of a certain house which was not awarded by the decree. This application was rejected. On the 23rd June 1887 the plaintiff made a third application for execution of the decree. *Held* that this application was barred by limitation, having been made more than three years after the date of the first application. The intermediate application was not an application for execution, nor a step in aid of execution, of the decree, inasmuch as it asked for what the decree did not give. It could not therefore keep the decree alive under art. 179, sch. II of the Limitation Act (XV of 1877). **PANDARINATH BAPUJI v. LILACHAND HATIBHAI**

[I. L. R., 13 Bom., 237]

4. STEP IN AID OF EXECUTION.

(a) GENERALLY.

172. — *Proceeding to enforce decree by interested party.*—In order to enforce, or to keep in force, a decree, it was not necessary that the proceeding alluded to in s. 20, Act XIV of 1859, should have been taken by the particular party seeking to execute: it was sufficient if any one interested had taken any proceeding. **NARAIN ROY v. SREENATH MITTER** . . . 9 W. R., 485

173. — *Right to enforce decree.*—In order to keep a decree alive, s. 20 of Act XIV of 1859 does not require more than that some actual proceeding should be taken, which, if successful, would result in the discharge or partial discharge of the judgment-debt. The proceeding need not be by a person legally and rightfully entitled to the decree. **NADIR HOSSEIN v. PEAROO THOINDARINEH** 14 B. L. R., 425 note: 19 W. R., 255

174. — *Defect in application for execution.*—Where there has been in fact an application for execution made by the party entitled to make it, it is to be regarded as a step in aid of execution within the meaning of the Limitation Act, art. 179, although by mistake a deceased judgment-debtor is named as the person against whom execution is sought. **SAMIA PILLAI v. CHOCKALINGA CHETTIAR** [I. L. R., 17 Mad., 76]

175. — *Application not by decree-holder in the record—Application to execute decree.*—An application not made by the decree-holder at the time on the record cannot be considered to be an application to execute the decree. **DURIAO ROY v. DOOLLA ROY** . . . 24 W. R., 10

176. — *Proceedings to keep decree in force.*—A decree was obtained on 6th

LIMITATION ACT, 1877—continued**3 NATURE OF APPLICATION—continued**

the order of the settlement officer directing the entry of the judgment debtor's name in the revenue registers in respect of such share applied for execution of such decree improperly asking the Court executing the decree to order the Collector to amend such entry by the substitution of their names for that of the judgment debtor in respect of such share, instead of asking it to send such officer a copy of such decree for his information with a view to

184 ————— *Informal applica*

that order was not complied with and the petition

LIMITATION ACT, 1877—continued**3 NATURE OF APPLICATION—continued**

ing sum of Rs90, to be paid in 1882, was filed in

of 1882) was therefore too late under cl 4 art 179 of sch II of the Limitation Act XV of 1877
CHATUR KRUSHALCHAND v. MAHABU BHAGAJI
[I L R., 10 Bom., 81

his pleader made an application for execution on his behalf this being the first application of the kind,

a decree holder's claim from being barred by limitation
KALLU v. MUHAMMAD ABDUL GHANI
[I L R., 7 All., 564

187 —————

amendment instead of being amended while on the file of the Court made no difference to the application of the above principle FUZZOOR PUNMAN v. ALRAY HOSSEIN
I L R., 10 Cal., 541

185 ————— *Dekkan Agricultur*
its Relief Act XVII of 1879 s 20—Conciliation agreement—Civil Procedure Code (Act XVI of 1882) s 261—Application for attachment of an

ing that they were the proprietors of the land applied for execution of the decree The application was refused on the ground that the proceedings in execution taken by the last mentioned agent were invalid and execution of the decree was therefore barred by limitation Held that such proceedings, however irregular, were not invalid. LACHMAN BIBI v. PATNI RAM
I L R., 1 All., 510

188 ————— *Legal representatives*
applying for execution without her name being on the record—A obtained a decree against B in June 1879 and in execution thereof some time in 1879

LIMITATION ACT, 1877—*continued*.4 STEP IN AID OF EXECUTION—*continued*.

of the file is not an effectual proceeding to keep a decree in force under the Law of Limitation. *MURRAY BIRCHALL v. POGGIE BHAKTAR* . . . 8 W. R., 320

183. *Striking case off the file*.—The mere pendency of an execution case struck off the file for want of prosecution, or the striking such case off the file, is not a proceeding within the meaning of s. 20, Act XIV of 1859. *RAM SINGH SINGH v. SHIV SINGH SINGH, GOLENDAS ASHUTOSH v. GOVIL NATH* . . . [B. L. R., Sup. Vol., 402
1 Ind. Jur., N. S., 421; 8 W. R., Misc., 93]

184. *Consent to striking case off the file*.—Consent of the decree-holder to the striking off of an attached debt is not a proceeding to enforce a decree, but a self-judgment. *TULSI v. PATEL SINGH* . . . Agra, F. D., Ed. 1874, 117

185. *Striking off execution proceedings*.—A District Judge having held that an application to execute a decree did not prevent the operation of s. 20 of Act XIV of 1859, it having been struck off, because the applicant did not pay fees, the High Court reversed the order, and directed the Judge to determine whether the former application to execute the decree was *bond fide*, notwithstanding fees had not been paid. *DALVI v. LALCHURN HANI PATIL* . . . 4 Bom., A. C., 80

186. *Striking off execution proceedings*.—A decree was passed in 1850, and was in force in 1859, when Act XIV of that year was passed. Between August 1859 and 25th April 1861, nothing effective was done in furtherance of execution. Petitions for execution were filed in May 1861 and August 1861, and the usual orders passed on them, but they were struck off in default. On 25th April 1861 another petition was filed, and notice was served on the debtor. *Held* that at that time the petition for execution was barred by limitation. The decree was not kept alive by the petitions of May 1861 and August 1861, which were struck off in default. *SATYASARAN GHOSAL v. BHAIJAN CHANDRA BRAHMO*

[2 B. L. R., A. C., 190; 11 W. R., 80]

Affirming the decision of the High Court in *STITO CHURN GHOSAL v. BHAIJAN CHANDRA BRAHMO* . . . 9 W. R., 585

187. *Striking off execution proceedings—Bond fide proceedings to keep decree in force*.—A decree was obtained on 16th April 1861, and execution was applied for on 28th December 1861, when the applicant was ordered by the Court to produce a certificate of heirship. On his failing to do so, the case was struck off. He next applied for execution on 13th August 1864. *Held* that the proceedings taken in 1861 were not *bond fide* proceedings on the part of the Court such as would keep the decree alive, and that the application was barred. *LACHMIPAT SINGH ROY v. WAHID ALI* . . . 2 B. L. R., A. C., 194; 11 W. R., 70

LIMITATION ACT, 1877—*continued*.4. STEP IN AID OF EXECUTION—*continued*.

188. *Striking off execution proceedings—Bond fide*.—Where the representatives of a deceased decree-holder applied for execution of his decree, and were directed to furnish proof that they were the representatives of the deceased, and did so, and then their execution case was struck off the file, *Held* that the steps taken by them were *bond fide* steps taken to keep the decree alive. *ADINA BIBI v. SHAMUNNISSA BIBI* . . . [3 B. L. R., Ap., 142]

189. *Striking off execution proceedings—Proceeding to enforce decree*.—Application for the execution of a decree was made on the 21st December 1861, and in pursuance of such application the notice required by law was issued to the judgment-debtor. On the 7th February 1865 the Court executing the decree called on the decree-holder to produce proof of the service of such notice within four days. On the 23rd February 1865, in consequence of the decree-holder having failed to produce such proof, the Court dismissed the application. There was no proceedings either of the decree-holder or of the Court between the 7th and the 23rd February 1865. On the 18th February 1868 application was again made for the execution of the decree. *Held* that the proceeding of the Court of the 23rd February 1865, striking off the former application for default of prosecution, was not a proceeding to keep the decree alive, and the latter application was therefore beyond time. *RAGHU RAM v. DASSU LAL*

[I. L. R., 2 All., 285]

190. *Striking off execution proceedings—Application for execution of decree*.—On the 16th January 1876 a decree-holder applied for execution of his decree, and the 3rd of March 1875 was fixed for the sale of the judgment-debtor's property. On the last-mentioned date the debtor applied for two months' time, and the decree-holder assented to postponement for that length of time only. The application was granted, and the Court thereupon struck the case off the file. Nothing further was done until the 25th February 1878, when the decree-holder again applied for execution. *Held* that the application of 3rd March 1875 was in fact a step taken in aid of execution of the decree, and that the application of 25th February 1878 was therefore, under Act XV of 1877, sch. II, art. 179, cl. 4, within time. *RAJLEKH DASSEE v. RASH MUNJURY CHOWDRAI* . . . 5 C. L. R., 515

191. *Application to strike off pending execution with liberty to make fresh application—Application made before Act VI of 1892*.—*Held* that an application made before the passing of Act VI of 1892 by a decree-holder to the Court executing the decree to strike off a pending application for execution with liberty to make a fresh application for execution of the same decree was an application in accordance with law to take a step in aid of execution of the decree within the meaning of Act XV of 1877, sch. II, art. 179, cl. 4. *RAM NARAIN RAI v. BAKHTU KUAR* . . . [I. L. R., 16 All., 75]

LIMITATION ACT, 1877—continued

4 STEP IN AID OF EXECUTION—continued
 June 1861 and in February 1864 a pretended pur
 chaser of the property in question

for that purpose were *bond fide* proceedings within
 s. 20 Act XIV of 1859 for the purpose of keeping the
 decree in for e **ABDUL GUNY v. PODOSE**

[4 B L R, A C, 1 12 W R., 436]

177 ———— Application for exe
 cut on of decree by *benamidar*—An application for
 execution of a decree by a mere *benamidar* is not an

LALLU COOMAR GANGOPADHYA

[I L R, 9 Calc, 633 12 C L R, 146]

178 ———— Application for exe
 cution by *benamidar*—Application not in accordance
 with law—In a suit brought for declaration of the
 plaintiff's right to hold certain property free of a

benamidar so far as his purchase of the mortgage

law within the terms of art. 179 of the Limitation

LIMITATION ACT, 1877—continued

4 STEP IN AID OF EXECUTION—continued

**DHURY GOUR SUNDAR LAHIRI v. HAFIZ MAHAMED
 ALI KHAN**

[I L R, 18 Calc, 355]

See **BALESHWARY DAS v. BEDMATI KOOB**
 [I L R, 20 Calc, 388]

179 ———— Proceeding to en
 force decree—Steps taken to ards placing the
 assignee of a decree in the position of the original

180 ———— Decree—Appl cation
 to enforce decree—Application by heir of deceased
 decree holder to substitute his name on the record

the money due under the

the 3rd January 1874 was therefore barred by limit

SHANBHOG v. APPAYA [I L R, 5 Bom, 246]

181 ———— Dispute bet een ar
 chaser of decree and third party—A dispute between
 the purchaser of a decree and a third party and the

See **BRISONAULT CHOWDHRY v. LALL MEERAN
 MUNKESPOORE** [14 W R, 391]

The proceeding must be one against the judgment-
 debtor **JADO LALL v. RADHA KISSEN MITTER**
 [17 W R, 99]

(b) STRIKING CASE OFF THE FILE EFFECT OF

182 ———— Striking case off the
 file—Proceeding to enforce decree—Striking

LIMITATION ACT, 1877—continued.

4. STEP IN AID OF EXECUTION—continued.

the moveable property—Application for execution as regards immovable property.—*S M*, on 24th April 186, obtained a decree against *B M* for possession of certain land and also for certain moveable property. *B M* then appealed to the High Court against the decree so far only as it related to the moveable property. *S M* appeared as respondent. The High Court modified the decree in respect of the moveable property only on the 6th March 1869. On the 26th April 1869 the decree-holder applied to the Court which gave the original decree for execution in respect of the land only. He was refused execution as barred by limitation under s. 20, Act XIV of 1859. *Held* the appearance of *S M*, the decree-holder, as respondent in the appeal preferred by *B M* to the High Court (which was in respect of the moveable property only), was no proceeding to enforce the decree in respect of the land or to keep it in force. The execution of the decree in respect of the land was barred. *SRINATH MAZUMDAR v. BRAJANATH MAZUMDAR* 4 B. L. R., Ap., 99: 13 W. R., 309

205. — *Appearing as respondent in appeal.*—In this case certain proceedings of the Deerbloom Courts in 1866 appealed to, and finally decided by, the High Court in 1868 were held to be the proceedings that would, while they were being carried on, have prevented the decree-holder (respondent) from executing his decree, and therefore proceedings that prevented the bar of limitation from applying to the execution of that decree. *SREENARAIN MITTER v. DIERAJ MANTAB CHUND* . . . 17 W. R., 72

206. — *Proceedings to enforce decree—Opposing right of third party to attached property.*—A decree-holder having sold certain property in execution and purchased it himself, a balance remained due to him under the decree. Some time after, a third party brought a suit to establish his right to the property, the decree-holder and judgment-debtor both being made parties. *Held* that it was right, and, under the circumstances, perfectly equitable, to count the time spent by the decree-holder in that litigation as spent in *bona fide* carrying on execution. *ROMA NATH JHA v. LUCHMIPUT SINGH* . . . 19 W. R., 418

207. — *Defence to suit.*—A party (*M*), having lent money on the security of land, obtained a decree against the borrower for principal and interest, execution being stayed for six months, and plaintiff's lien on the land maintained. A year after the decree-holder applied for execution, and the estate was attached with a view to sale. Thereupon one *K* claimed the estate as his property, and, the claim being disallowed, commenced a suit in a Civil Court to establish his title, paying in shortly after, under protest, the sum which had accrued under the decree, and that money was taken out with the leave of the Court by the decree-holder (*M*), and satisfaction entered upon the decree. Subsequently *K* obtained a decree, in virtue of which *M* was ordered to refund the money. *Held* that the defence to *K*'s suit by the decree-holder *M* would not be a

LIMITATION ACT, 1877—continued.

4. STEP IN AID OF EXECUTION—continued.

proceeding taken by him within the meaning of s. 20, Act XIV of 1859, to keep his decree alive. *PROSUNNO CHUNDER ROY v. MOOKOOND PERSHAD ROY* . . . 11 W. R., 210

208. — *Application for execution of decree—Step in aid of execution.*—An application by a decree-holder praying that the objections taken by the judgment-debtor to the sale of property belonging to him in execution of the decree should be disallowed, and the sale be confirmed, is an application from the date of which the period of limitation for a subsequent application for execution of the decree may be computed. *KEWAL RAM v. KHADIM HUSAIN* . . . I. L. R., 5 All., 576

209. — *Application by decree-holder for rejection of petition of judgment-debtor objecting to sale, and for confirmation of sale.*—An application by a decree-holder, praying that a petition of the judgment-debtor to set aside the sale of property belonging to him should be rejected and the sale be confirmed, is an application falling within the meaning of art. 179, cl. 4, of sch. II of the Limitation Act, XV of 1877. An application for execution of the decree made within three years from such a former application is not barred. *Kewal Ram v. Khadim Husain*, I. L. R., 5 All., 576, followed. *GOBIND PERSHAD alias GOBIND LAL v. RUNG LAL* . . . I. L. R., 21 Calc., 23

210. — *Application to take a step in aid of execution—Opposing application to set aside sale in execution of decree.*—The appearance of a decree-holder by his pleader to oppose an application made by the judgment-debtor to set aside a sale in execution of the decree is not an application within the meaning of art. 179 of sch. II of the Limitation Act to take a step in aid of execution. The application contemplated by that article is an application to obtain some order of the Court in furtherance of the execution of the decree. *UMESH CHUNDER DUTTA v. SONDER NARAIN DEO* [I. L. R., 16 Calc., 747

211. — *"Step in aid of execution of decree."*—*R*, in a suit against *S* and other persons, obtained a decree on the 24th December 1878, *S* being exempted from the decree, and being awarded costs against the plaintiff. In executing his decree, *R*, on the 16th June 1880, sought to set off all the costs awarded to *S* against the amount due to himself. On the 6th August 1880 *S* preferred objections to this course. On the 19th July 1883 *S* applied for execution of his decree for costs. *Held* that the application was barred by limitation, inasmuch as art. 179 (4) of the Limitation Act requires that the decree-holder should make a direct and independent application for execution on his own account, and it was not sufficient to satisfy the requirements of the law to offer objections under the circumstances under which they were offered in the present case. *SHIB LAL v. RADHA KISHEN*

[I. L. R., 7 All., 896]

LIMITATION ACT, 1877—continued

4 STEP IN AID OF EXECUTION—continued

(c) RESISTANCE TO LEGAL PROCEEDINGS

192. ————— *Proceedings to enforce decree*—Resistance to legal proceedings taken by another person counted as a proceeding for the purposes of s 20 Act XIV of 1859 **KALSH BISHOR BOSH v PROSPRO CHUNDER ROY**

[10 W. R., 249]

193. ————— *Continuance of con-*

*test conti-
cree-
judg*
within s 20 Act XIV of 1859, and the period of limitation was to be computed from the Court's decision—the decision in the case of **Ram Sahai Sing v Sheo Sahai Singh, B L R Sup**

CROTAY LAL v RAM DYAL 3 N W, 403

MOOHOO SOODUN MOOKERJEE v KIRTI CHUNDER GHOSH 18 W R, 7

194. ————— *Resisting claim to attach property*—Bond file proceedings in resistance of a claim to attach properties were proceedings to enforce a decree within the meaning of s 20 of Act XIV of 1859 **BECHARAM DUTTA v ABDUL WAHED** I L R, 11 Cal, 55

195. ————— *Resisting appeal against decree*—Resisting an appeal against a decree (which appeal was eventually compromised) was a proceeding within the meaning of s 20 Act XIV of 1859 taken to enforce or keep alive the decree **SYED KHAN v JUMAL BIKER** 5 W R, MIs, 19
See BUKRONATH CHUCKERBUTTY v NIRMAL SINGH DEO 18 W R, 7

RAM RUTTON BANERJEE v AMBERGOOLMOH BUNWATER GHOSH 8 W. R., MIs, 95

196. ————— *Opposing application for leave to appeal*—An appeal prosecuted to a decree was a proceeding to enforce a decree within

S C in Court below, KISHEN KISHORE GHOSH v BURADA KANT ROY 8 W R, 470

197. ————— *Appeals against orders*—Appeals against orders of the Court charged

LIMITATION ACT, 1877—continued.

4 STEP IN AID OF EXECUTION—continued

198. ————— *Appeal from order setting aside attachment*—So also was an appeal from an order setting aside an attachment **KALLYPERSAUD SINGH v JANKER DEO NARAIN**

[7 W. R., 9]

199. ————— *Opposing application for review or petition of appeal*—If after a decree upon an application for review of judgment or petition of appeal the person in whose favour the original decree was given appears in person whether voluntarily or upon service of notice to oppose the application and files a vakalatnama, or does anything for the purpose of preventing the Appellate Court or

[31 L R., Ap, 33]

KAJLA CHAND PAUL v DHIRAJ MAHATTA CHAND [18 W R, 190]

200. ————— *Opposing applica-*

201. ————— *Opposing applica-*

[2 Ind Jur N S, 249
7 W R, 521]

LUTERFOX v RAJROOP SINGH [10 B L R, 361 19 W. R., 185]

202. ————— *Opposing application for review*—But there is such a proceeding if he

203. ————— *Appearance as respondent in appeal*—The appearance of the person in whose favour a judgment was given as respondent

204. ————— *Decree for moveable and immoveable property*—Appeal in respect of

LIMITATION ACT, 1877—continued.**4. STEP IN AID OF EXECUTION—continued.**

alleged property of B, the judgment-debtor. Third parties intervened who established their claim to the land. A thereupon brought a regular suit, and succeeded in obtaining a decree declaring the lands in suit to be the property of B. Within a year of the date of this decree, but more than three years after his first application for execution, A filed a third application for attachment of other lands belonging to B. *Held* the application was barred by limitation. **RAMSOONDER SANDYAL v. GOPESSUR MOSTOREE**

[I. L. R., 3 Calc., 716; 2 C. L. R., 220]

223. ———— *Suit to set aside order in a claim case—Execution of decree—Application in continuation of a previous application for execution.*—Cl. 4, art. 179, sch. II of the Limitation Act, 1877, does not include a suit to set aside an order passed in a claim case. R and L obtained a decree against B on the 7th March 1881, and in execution of that decree certain property belonging to B was attached on the 11th June 1883. Thereupon a claim was made to the attached property by third parties, and a two-thirds share therein was released by the Court executing the decree. On the 22nd March 1884 R and L instituted a suit for a declaration that the entire property was liable to be sold under their decree, and obtained a decree on the 29th March 1886. This decree was reversed by the lower Appellate Court, which upheld the order releasing a two-thirds share of the property, and on 22nd July 1887 the High Court affirmed the decree of the lower Appellate Court. On the 15th August 1887 R and L applied for execution of their decree in respect of the remaining one-third share. B objected that the application was barred. *Held* that the application of the 15th August 1888 was not a continuation of the application of the 11th June 1883. **PAYROO TUHOVILDARINEE v. NAZIR HOSSEIN**, 23 W. R., 183; **ISSUREE DASSEE v. ABDUL KHALAK**, I. L. R., 4 Calc., 415; **CHUNDRU PRODHAN v. GOPI MOHUN SHAHA**, I. L. R., 14 Calc., 385; and **PARAS RAM v. GARDNER**, I. L. R., 1 All., 355, distinguished. *Held* also that the institution of the suit on the 22nd March 1884 and the appeal to the High Court from the decree of the lower Appellate Court were not steps in aid of execution. **AKBAR GAZRE v. BIBEE NUFEERUN**, 8 W. R., 99, distinguished. **RAGHUNANDUN PERSHAD v. BRUGOO LALL** . . . I. L. R., 17 Calc., 268

224. ———— *Proceeding to enforce decree.*—A suit for a declaration of plaintiff's right to assess certain lands as mal having been decreed, some of the defendants applied under s. 119, Act VIII of 1859, and prayed the Court to set aside the decree. The remaining defendants were made parties, and the decree was materially modified. *Held* that, as the decree-holder was taking steps for the purpose of preserving the original judgment intact, he was taking a proceeding to keep the decree alive. **POORNANUND SURKEEL v. HUNO SOONDEREE DERIA** . . . 13 W. R., 208

LIMITATION ACT, 1877—continued.**4. STEP IN AID OF EXECUTION—continued.**

225. ———— *Procuring attachment and advertising for sale.*—Where a decree-holder expended money, in procuring attachment of his debtor's property and advertising the same for sale, the proceeding was presumed, nothing to the contrary being shown, to be a *bona fide* proceeding within the meaning of s. 20, Act XIV of 1859. **JUTTADHAREE SINGH v. WUZREE SINGH**

[12 W. R., 357]

226. ———— *Application to arrest judgment-debtor.*—An application to arrest, which is not carried out, is a *bona fide* proceeding, taken with the intention of keeping the decree alive, only when the judgment-creditor can show that certain circumstances happened that rendered it unnecessary for him to proceed further against the judgment-debtor in execution of that process. **JOYKISHEN SHAHA v. BISHOKA MOYEE CHOWDRAN**

[17 W. R., 355]

227. ———— *Unsuccessful suit to have property made liable under decree.*—An unsuccessful suit by a decree-holder for the purpose of having specified property made liable under his decree is a proceeding to keep the decree in force. **AKBAR GAZRE v. NUFEERUN** . . . 8 W. R., 99

ESHAN CHUNDER BOSE v. JUGGOBUNDHOO GHOSH . . . 8 W. R., 98

Contra, **JUNARDUN DOSS MITTER v. RAJAH ROOKNER BULLUB** . . . 6 W. R., Mis., 48

228. ———— *Unsuccessful application to substitute names as heirs of decree-holder.*—The petitioners applied for the substitution of their names as heirs of a deceased decree-holder, but failed to satisfy the Judge that they were the heirs of the original decree-holder. *Held* that such an infructuous application was not a process to enforce or keep in force a decree, within the meaning of s. 20. **LALLA BISHEN DYAL SINGH v. RAM SUNKUR THWARBE** . . . 6 W. R., Mis., 38

229. ———— *Taking out proceeds of previous sale in execution.*—The act of taking out the proceeds of a previous sale in execution of a decree was held not to be a proceeding to keep the decree in force. **KISHEN MOHUN JUSH v. CHUNDER KANT CHUDKERPUTTY** . . . 6 W. R., Mis., 49

230. ———— *Taking out money deposited in Court.*—The taking out by a decree-holder of money deposited in Court by his judgment-debtor was an effectual proceeding under s. 20, Act XIV of 1859, to keep the decree in force. **JOGESHI PROKASH GANGOOLY v. KALEE COOMAR ROY**

[8 W. R., 274]

231. ———— *Conduct of sale and remission of proceeds to the Collector by Nazir.*—The rule approved by the Privy Council, that any act done by a Court or an officer thereof, or *bona fide* by the applicant, for enforcing or keeping in force a decree, satisfies the term "some proceeding" in s. 20, Act XIV of 1859, was held to apply to the act of a Nazir in conducting a sale and remitting the proceeds to the Collector, and to the act of the decree-holder

LIMITATION ACT, 1877—continued**4 STEP IN AID OF EXECUTION—continued****(d) SUITS AND OTHER PROCEEDINGS BY DECREE-HOLDER**

212 ————— *Proceedings to keep decree in force*—Where a decree holder is referred to a civil suit by the Court to which he

refers or
der his
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decree

COOMAR CHOWDHRY . . . **15 W R, 207**

213 ————— *Application for older*
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Limitation Act, 1871 Gopilandhu v. Domburu
[I L R., 11 Mad., 336]

214 ————— *Application for return of a copy of a decree*—An application to the Court by a decree holder asking for the return of the copy of a decree filed with a former dakhast is not a step in aid of execution within the meaning of art 179 (4) of the Limitation Act (XV of 1877) RAJARAM v BANAJI MAIBAL
[I L R., 23 Bom, 311]

Kuar I L R 16 All, 75, dissented from TARAK CHUNDER SEN v GYANADA SUNDARI
[I L R., 23 Calc, 817]

216 ————— *Civil Procedure Code, s 206—Application to bring decree into conformity with judgment*—The granting of an

217 ————— *Application dis*

dismissed on that ground . . . Held that that appli

LIMITATION ACT, 1877—continued**4 STEP IN AID OF EXECUTION—continued**

218 ————— *Application for lists of properties attached*—An application by a decree holder for a list of the properties attached in execution of his decree is not a step in aid of

219 ————— *Application to amend decree under s 206, Civil Procedure Code, 1859—Application to 'the proper Court'*—An

Sahas v Collector of Allahabad, I L R., 4 All 137, Tarsi Ram v Man Singh, I L R., 8 All, 492 and Kallu Rai v Fakiman I L R., 13 All, 124, referred to DAYA KISHAN v NANHI BEGAN . . . I L R., 20 All, 304

220 ————— *Suit to set aside order under s 246, Civil Procedure Code 1859*—A suit by a decree holder to set aside orders passed under s 246, Act VIII of 1859, and to declare his right to sell a certain estate as the property of his judgment debtor in execution of his decree, was a proceeding within the meaning of s 20, Act XIV of 1859, to enforce such decree RAM COOMAR CHOWDHRY v BROJESUTUP CHOWDHURAI

[6 W R, Mis, 14]

KASHER PERSHAD ROY v SHIB CHUNDER DUTT
[2 W R, Mis, 3]

221 ————— *Execution of decree obtained before the passing of Act XIV of 1859*—Suit by decree holder to declare property liable to attachment—Process of execution of a decree obtained before the passing of Act XIV of 1859

the application for execution. A regular suit by a decree holder for a declaration that property released from attachment, under s 246 of Act VIII of 1859, is liable to attachment in execution of his decree, was a proceeding to keep a decree in force within the meaning of s 20, Act XIV of 1859 KANGLES CHURN GHOSAL v BONOMALEE MULICK MAHABEER PARSAD v PRANPUTTY KOER

[B. L. R., Sup Vol, 709, 7 W. R, 515]

DREGENDUR NARAIN GHOSE v HURKISHORN DUTT . . . 8 W. R., 88

222 ————— *Suit under s 246 Act VIII of 1859—Proceeding to enforce decree*—Within three years of his first application in execution of a rent decree A, the judgment-creditor, made a second application to sell certain lands, the

LIMITATION ACT, 1877—continued.**4. STEP IN AID OF EXECUTION—continued**

September 1897, and it was struck off the file for some formal defect on the 15th November 1897. Subsequently on the 10th October 1898, the plaintiff having applied for an order absolute for sale under s. 89 of the Transfer of Property Act (IV of 1882)—*Held* that art 179, sch II of the Limitation Act (XV of 1877), applies to applications under s. 89 of the Transfer of Property Act. *Held* further that in the present case the application of September 1897 should be treated as a step in aid of execution. BHAGAWAN RAMJI MAHWADI v. GANU I. L. R., 23 Bom., 644

250. ———— *Proceedings to execute decree for costs*—Having obtained possession of property in satisfaction of a decree, the decree holder

the costs BARONATH JHA v. KHEGPET DOB [19 W. R., 226

251 ———— *Transmission by Court of decree for execution*—The transmission by the Court of one district to the Court of another of a copy of its decree, and a certificate under the provisions of ss. 285 and 286 of Act VIII of 1859, with a view to execution in that other district, was a "proceeding" within the meaning of s. 20 Act XIV of 1859 LEAKS v. DANIEL 10 W. R., 337

force the decree within the meaning of art. 167, sch. II of Act IX of 1871. HUSAIN BAKSHI v. MADGE I. L. R., 1 All., 525

save limitation. FRANKS v. NUNEH MAL [7 N. W., 79

ation Act. COLLINS v. MAUZA BAKSHI [I. L. R., 2 All., 284

255. ———— *Application for transfer of decree under s. 223 of Civil Procedure Code, 1877.*—An application for the transfer of a

LIMITATION ACT, 1877—continued.**4. STEP IN AID OF EXECUTION—continued.**

decree under the provisions of s. 223 and the following section of Act X of 1877 is a step in aid of the execution of the decree within the meaning of cl. 4, art. 179, sch II of Act XV of 1877. LATCHMAN PUNDEH v. MADDAN MOHUN SHYE

[I. L. R., 6 Calc., 513; 7 C. L. R., 521

256. ———— *Application for transfer of decree—Civil Procedure Code (1882), s. 223*—An application to the Court which passed a decree for its transfer to another Court for execution under s. 23 of the Civil Procedure Code is a step in aid of execution, and sufficient to keep the decree alive within the meaning of the Limitation Act, sch II, art 179, cl. 4. NIMONY SINGH DEO v. BURESUR BANERJEE, I L. R., 16 Calc., 741, explained COLLINS v. MAUL v. BAKSHI, I L. R., 2 All., 284, and LATCHMAN PUNDEH v. MADDAN MOHUN SHYE, I L. R., 6 Calc., 513, referred to and followed CHUNDRA NATH GOSSAMI v. GURROO PROSUNGO GHOSH

[I. L. R., 23 Calc., 375

257. ———— *Application for transfer of decree*—An application to the Court which passed a decree for its transfer to another Court under s. 223, Civil Procedure Code, is an applica-

approved of. ROMA NATH DEB v. GOURI SANKAR KHATRA 2 C. W. N., 415

for execution, an application to the latter Court to return the decree to the Court which passed it for further execution is a step in aid of execution within the meaning of cl 4 art 179, sch II of the Limitation Act, 1877. KRISHNAYAR v. VENKAYAR [I. L. R., 6 Mad., 81

258 ———— *Transmission of decree for execution—Application for execution of attached decree—Civil Procedure Code, ss. 223, 228, 273*—A decree was passed on the 20th February 1878 by the Munsif of M. In November 1878 it was, in accordance with the provisions of s. 223 of the Civil Procedure Code, transferred to the Munsif of J. On the 21st January 1879 an application for execution of the decree was made to the Munsif of J, who thereupon issued an order for

be realized in such execution should go to the account of the decree which had been transferred, and which was being executed. *Held* that an application of the 15th March 1882 was perfectly legal.

LIMITATION ACT, 1877—continued**4 STEP IN AID OF EXECUTION—continued**

in applying for and drawing out a portion of these proceeds **RAJESHURIE DEBIA & RAJ COOMARIE DOSSEE** . 15 W. R., 182

232. ————— *Application to take money out of Court—Bond fides*—An execution sale was stayed by consent for two months and the execution suit was struck off the file. During such period the execution creditor applied to the Court to restore his execution suit and to pay to him certain

Reverend **MONDOOMUTTY DEBIA & DHUNPUT SINGH** . 13 W. R., 184

233 ————— *"Step in aid of execution"—Application for sale proceeds*—An application by a decree holder to be paid the proceeds of a sale of property in execution of the decree is 'a step in aid of execution' of the decree within the meaning of art 179 (a) sch II of Act XV of 1877 (Limitation Act) **PARAN SINGH & JIVAN SINGH** [I L R, 8 All, 388]

234 ————— *Application to take money out of Court*—An application made by a judgment creditor to take out of Court certain moneys there deposited by his judgment debtor cannot be

DEBIA & BROJO SOONDURY DEBIA [I L R, 8 Calc, 89, 10 C. L R, 272]

DOY IANA CHOWDHRAIN & ABDOL JUBBUR CHOWDHRY . 24 W. R., 339

236 ————— *Application to take*

LIMITATION ACT, 1877—continued.**4 STEP IN AID OF EXECUTION—continued**

satisfaction of a decree is sufficient to keep the decree alive, being a step in aid of execution

than the time at which it may possibly be done **Hem Chunder Choudhry & Brojo Soondury Debee, I L R, 8 Calc, 89, qualified KOORMATTA & KRISHNAMMA NAIDU** I L R, 17 Mad, 165

art 179 of sch II of the Limitation Act (XV of 1877) **BAPUCHAND JETHIRAM GUJAR & MUGUTRAO** I L R, 32 Bom., 340

239 ————— *Steps taken to get money out of Court after refusal of application*—Where by declining to pay to the decree holder the proceeds of an execution sale which has been confirmed a Court obliges him to take steps to satisfy the Court that there is no other claimant, such steps must be considered as a proceeding to enforce the decree and obtain satisfaction thereof **MAHOMED HOSSEIN KHAN & LOOTY ALI KHAN** [18 W R., 463]

240 ————— *Payment out of Court to plaintiffs of money collected by receiver but not under decree*—The question whether an

Act. The receiver had been appointed during the pendency of the suit, which was by mortgagees for possession of the mortgaged land and for mesne profits accrued prior to the date of plaint. The receiver remained in possession of the land for a

constitute a step in aid of execution, and that the present application was barred by art 179 of sch II to the Limitation Act **APPASAMI NAICKAN & JORNA NAICKAN** . I L R., 448

237. ————— *Request for payment of money realized in satisfaction of a decree.*—A request for the payment of money realized in

LIMITATION ACT, 1877—continued

4 STEP IN AID OF EXECUTION—continued
payable by instalments the first instalment to fall due on 14th July 1865, at the same time an existing

of limitation allowed by law for the execution of decrees or which alters the terms of the decree The filing of the listbands and relinquishment of the attachment were not a proceeding to enforce the decree or keep it in force Execution of the decree was barred by limitation
KRISHNA KAMAL SINGH
HIRU SIRDAR 4 B L R, F B, 101

S. C. KRISHNA KOMAL SINGH v. HIRU SIRDAR
[13 W R, F B, 44]

269 ———— *Receipt of instalment under compromise out of Court*—The receipt of instalments by a decree holder out of Court in pursuance of a compromise made between him and his judgment debtor is not a proceeding to enforce or keep in force a decree Nor can the condition in a compromise that on default being made in a certain number of instalments the decree should be executed in full prevent limitation from running
ABOO IMAM
BENES RAM 5 N W, 100

270 ———— *Application report on adjustment by parties*—An application by a judgment debtor stating that the proceedings in execution had been adjusted and he had paid the decree holder R10 and would pay him the balance of the decretal amount subsequently and praying that the execution case might be struck off is an application to keep in force the decree within the meaning of art 167 sch II of Act IX of 1871, and a step in aid of execution of the decree within the meaning of art 179 sch II of Act XV of 1877
GHANSHAM v. MUKHA
[I L R, 3 All, 320]

keep the decree alive within the meaning of the Limitation Act (XV of 1877) sch II No 179 (4)
Ganesham v. Mukha, I L R 3 All 320 referred to
MUHAMMAD HUSAIN KHAN v. RAM SARUP
[I L R, 9 All, 9]

272 ———— *Application to re*
within the meaning of cl 4, art 179 of sch II of the

LIMITATION ACT, 1877—continued

4 STEP IN AID OF EXECUTION—continued
Limitation Act *TABINI DAS BANDYOPADHYA v. BISHROO LAL MUKHOPADHYA*

[I L R, 12 Cal, 608]

273 ———— *Application by decree holder under Civil Procedure Code s 208*
—The
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274 ———— *Application to record certificate of payment by judgment debtor in part satisfaction—Civil Procedure Code s 258*—An application made by some of the judgment debtors (and signed by the decree holder) to have certain payments which were made out of Court certified under s 208 of the Civil Procedure Code and that time be allowed to pay the balance of the decree the attachment put upon their property continuing is a step in aid of execution such as will keep the decree alive within the meaning of the Limitation Act, art 179 cl 4
WASI IMAM v. POORVI SINGH I L R, 20 Cal, 696

ting it in part had transferred it to the Pres

the decree was returned to the subordinate Court on the 5th July 1888 On the 26th February 1889 an application was made to the subordinate Court to sanction an agreement to give time for the satisfaction of the judgment-debt under Civil Procedure Code s 207A but sanction was never given and on the 28th July 1891 the decree holder applied to have the decree transferred to another Court and in September

by SHYFARD and BEST JJ that whether or not such deduction should be made the present application was barred by limitation for the reason that the application on the 26th February 1889 was not a step in aid of execution
BARROW v. JAYACHUND SETH I L R, 18 Mad, 67

LIMITATION ACT, 1877—continued.**4. STEP IN AID OF EXECUTION—continued.**

and such a proceeding as could keep alive the decree of the 20th February 1878; and that a subsequent application for execution, dated the 12th April 1883, was therefore not barred by limitation. An application to execute an attached decree is a "step in aid of execution" of the original decree within the meaning of art. 179, sch. II of the Limitation Act, inasmuch as its object is to obtain money in order to pay off the judgment-debtor. *LACHMAN v. THONDI RAM* . . . **I. L. R., 7 All., 382**

260. — *Application for transmission of decree.*—Where a decree-holder applied to the Court to transmit the decree to another Court for execution, and on a subsequent date paid into Court postage stamps for the transmission of the records,—*Held* that, if when the postage stamps were paid into Court an application was made to take some step in aid of execution, such application would be sufficient to give a new period of limitation. *VELLALA v. JAGANATHA* . . . **I. L. R., 7 Mad., 307**

261. — *Application for transmission of decree.*—On the 2nd March 1887 *S* obtained a mortgage-decree against *P* in the Court of the Munsif of Hajipore. On the 9th September 1887 *S* applied for execution, and on the 7th November 1887 the mortgaged property was sold by the Hajipore Court. On appeal, on the 2nd September 1890, the High Court set aside the sale on the ground of want of jurisdiction. Thereupon, on the 6th September 1890, *S* applied to the Hajipore Court to transfer the decree for execution to the Munsif's Court at Muzaffarpore. On the 19th December 1890 *S* applied for execution to the Muzaffarpore Court. *L*, who had meanwhile purchased the mortgaged property from *P*, objected that the application was barred. *Held* that the application was not barred, as the application of the 6th September 1890 was a step in aid of execution. *Nilmony Singh Deo v. Bireswar Banerjee*, **I. L. R., 16 Calc., 744**, distinguished. *Latchman Pundeh v. Maddan Mohun Shye*, **I. L. R., 6 Calc., 513**, referred to. **RAJBULLUBH SAHA v. JOY KISHEN PERSHAD alias JOY LAL**

[I. L. R., 20 Calc., 29]

262. — *Proceedings to get Privy Council decree sent down for execution—Act XXV of 1862, s. 2.*—Proceedings had in the High Court for the purpose of getting a Privy Council order sent down to the lower Court for execution, whether strictly legitimate or not with reference to Act XXV of 1862, s. 2, if bona fide efforts made by the judgment-creditor to carry into effect that order, must be taken to be proceedings keeping the decree alive. *LETHBRIDGE v. PROHLAD SEN*

[19 W. R., 301]

263. — *Attempt to settle accounts.*—An attempt at settlement of accounts in Court is sufficient to keep a decree alive. *FUZUL-UTOONISSA v. CHUTTER DHAREE SINGH*

[6 W. R., Mis., 43]

264. — *Application for execution after decision of case on solehnamah.*—Where

LIMITATION ACT, 1877—continued.**4. STEP IN AID OF EXECUTION—continued.**

parties to a suit which had been decreed entered after remand into a compromise, and filed a solehnamah, in accordance with which the case was decided,—*Held* that an application to execute the solehnamah was not a proceeding taken on the basis of the decree, and, being therefore illegal, could not keep the decree alive. *PREO MADHUB SIRCAR v. BISSUMBHUN SIRCAR* . . . **15 W. R., 514**

265. — *Proceedings in execution to enforce barred decree—Compromise of decree, Payments under.*—Where a decree-holder entered into a compromise with the judgment-debtor, agreeing to accept payment by instalments, which was ratified by the Court executing the decree, the case being struck off the execution file on the basis of the compromise, and, more than three years after the date of the Court's order sanctioning the compromise, subsequent proceedings were taken by the decree-holder to enforce the original decree,—*Held* that such subsequent proceedings, when execution of the original decree had been already barred by limitation, could not avail to keep the decree alive. *STOWELL v. BILLINGS* . . . **I. L. R., 1 All., 350**

266. — *Application for execution of decree—Partial satisfaction under arrangement made through Court.*—*A*, a judgment-debtor, being arrested in execution of a decree, applied in the year 1873, under s. 273 of Act VIII of 1859, for his discharge. The Court refused to entertain the application except on condition that *A* should pay into Court a certain fixed sum of money per month on behalf of the judgment-creditor. *A*, accepting these terms, was thereupon discharged, and the execution proceedings struck off the file. *A*, in compliance with the directions of the Court, made regular payments into Court until October 1876, when he discontinued payment. *Held*, on an application made in June 1877 by the judgment-creditor for a warrant of further arrest against *A*, that inasmuch as the decree-holder was not seeking to enforce by means of execution the arrangement made by the Court in 1873, but was rather attempting to execute the original decree, such application was barred, more than three years having elapsed since the date of the last application for execution of such decree. *HUMRONATH BHUNJO v. CHUNNI LALL GHOSE*

[I. L. R., 4 Calc., 877; 3 C. L. R., 161]

267. — *Application to enforce arrangement made through the Court.*—Where the decree-holder sought to enforce the arrangement made by the Court for satisfaction of the decree, limitation was held not to apply. *RADHA KISSORE BOSE v. AFTAH CHANDRA MAHATAB*

[I. L. R., 7 Calc., 61]

268. — *Kistbandi—Extension of time for limitation by agreement of parties.*—*A* obtained a decree against *B* on the 17th September 1853. The decree was kept in force by sundry proceedings, the last of which was taken on the 30th December 1864. On the 6th February 1865, the parties filed a kistbandi, whereby they agreed that the amount due under the decree should be

LIMITATION ACT, 1877—continued**4. STEP IN AID OF EXECUTION—continued**

fresh date for the sale, is an application to enforce the decree within the meaning of art 167, sch II of Act IX of 1871. An application to enforce the decree made within three years from the date of such an oral application will therefore be within time. *AMAR SINGH v TIKU L. L. R., 3 All., 139*

See *AMBICA PERSAD SINGH v SURDHARI LAL*

[I. L. R., 10 Calc., 851]

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[I. L. R., 10 Calc., 851]

286 ————— Verbal applica-

one or in writing *Ambica Pershad Singh v Surdhari Lal, I. L. R. 10 Calc., 851*, followed *MANEELAL JAGIVAN v NASIA RADDHA*

[I. L. R., 15 Bom., 405]

287 ————— Application to exe-

the Court in motion to execute a decree in any manner set out in the last column of the form prescribed, but having so set the Court in motion, any further application, during the continuance of the same proceeding, is an application to take some step in aid of execution within the terms of cl 4 in the last column of art 179 of the Limitation Act. An application, therefore, for the sale of property under attachment is an application merely in aid of an execution then proceeding. *CHOWDHRY PAROOSH RAM DAS v KALI PUDDO BANERJEE* [I. L. R., 17 Calc., 63]

288. ————— Application to sell attached property subject to a mortgage—A judgment creditor applied on the 22nd May 1882 for execution of a decree dated 7th November 1881, and certain property of the judgment debtor's was

1885 another application was made for execution,

LIMITATION ACT, 1877—continued.**4 STEP IN AID OF EXECUTION—continued.**

and on the 20th November 1888 a third application was made. To the latter application objection was taken, and it was contended that the decree was

erroneous having

22nd May

Held that

852 by the

attached property

subject to the mortgage of the claimant was a step in aid of execution of the decree within the meaning of art 179 sch II, Act XV of 1877, and that execution of the decree was therefore not barred. *LALBAHADI MULLICK v KALA CHAND BERA*

[I. L. R., 15 Calc., 383]

289

Application by transferee of decree for sale of hypothecated property—Non registration of deed of assignment—Civil Procedure Code, s 232—On the 13th November 1886 the assignee of a decree for sale of hypothecated property applied under s 232 of the Civil Procedure Code, for execution of the decree, but objection being raised that the deed of assignment had not been registered subsequently applied for the return of the deed that it might be registered, and it was returned accordingly. The deed was afterwards duly registered. The next application for execution of the decree was made on the 25th April 1888. Held (i) that the deed of assignment was not a document which comprised immovable property within the meaning of s 49 of the Registration Act (III of 1877), a decree for sale not being immovable property as defined in s 3, (ii) that consequently, although the assignee might not under the latter portion of s 49 use the deed for the pur-

of art 179 cl 4, of sch II of the Limitation Act (XV of 1877) and that the application of the 25th April 1888 was within time. *ABDUL MAJID v MUHAMMAD FAIZULLAH*. [I. L. R., 13 All., 89]

in aid of execution" within the meaning of cl 4, art 179 sch II of the Limitation Act XV of 1877. *BANU v SURESH MAJ*

[I. L. R., 13 All., 211]

291

Application by decree-holder for leave to bid—An application by the decree-holder for leave to bid at the sale in execution of the decree is not a step in aid of execution.

LIMITATION ACT, 1877—continued.**4. STEP IN AID OF EXECUTION—continued.**

276. — *Application for time*—Application to review the order striking off the execution case and to restore it to file.—A decree which directs the realization of the decretal amount by sale, in the first instance, of the mortgaged properties, and afterwards from the persons and other properties of the defendants, is a mortgage decree,—and not “a decree for the payment of money” within the meaning of s. 230 of the Civil Procedure Code. Application for time is not “a step in aid of execution”; but an application for review of an order striking off an execution case and for its restoration to the file is undoubtedly a step in aid of execution within the meaning of the Limitation Act (XV of 1877), sch. II, art. 179. **KARTIOT NATH PANDEY v. JUGGER-NATH RAM MARWARI** . I. L. R., 27 Calc., 285

277. — *Agreement to suspend execution.*—An agreement to suspend execution for a specified time was not a “proceeding” within the meaning of s. 20, Act XIV of 1859. **MEHR-OOINSSA v. ROUSHAN JEHAN** . 17 W. R., 396

278. — *Application to stay execution.*—Held that an application by the decree-holder for the stay of execution-proceedings is not an application to enforce or keep in force the decree within the meaning of art. 167, Act IX of 1871. **FAKIR MUHAMMAD v. GHULAM HUSAIN**

[I. L. R., 1 All., 580]

279. — *Application by decree-holder to release portion of property from attachment and have case struck off the file.*—In execution of a decree, certain property was attached, and the sale-proclamation issued and served. Prior to the sale, the decree-holder applied to the Court executing the decree to release a portion of the property from attachment, and stating that he had, at the request of the judgment-debtor, decided not to proceed with the sale, asked that the sale might be postponed and the case struck off the file; the attachment, so far as the remainder of the property was concerned, being maintained. The application was acceded to and the case struck off the file. On a subsequent application to execute the decree,—Held that the above application was not an application to take some step in aid of execution of the decree within the meaning of cl. 4, art. 17 of sch. II of the Limitation Act of 1877, as it had rather the effect of temporarily retarding the execution, and that the application to continue the attachment under the circumstances of the case, even supposing it to have been a substantive application apart from the other prayers coupled with it, had merely the effect of leaving things precisely where they were, and did not advance the execution in any respect whatsoever. **ABDUL HOSSEIN v. FAZILUN** . I. L. R., 20 Calc., 255

280. — *Application to continue attachment, but to stay sale.*—Under the Civil Procedure Code (Act VIII of 1859), an application to the Court to continue the attachment of immoveable property, but to stay the sale of it, held to be a proceeding to keep in force the decree. **NUKANNA v. RAMASAMI** . I. L. R., 2 Mad., 218

LIMITATION ACT, 1877—continued.**4. STEP IN AID OF EXECUTION—continued.**

281. — *Application by decree-holder for postponement of sale—Application to take some step in aid of execution of decree.*—An application by a decree-holder for the postponement of a sale in execution of the decree, on the ground that he had allowed the judgment-debtor time, is not “an application according to law to the proper Court for execution, or to take some step in aid of execution, of the decree,” within the meaning of art. 179, sch. II, Act XV of 1877, and limitation cannot be computed from the date of such an application. **MAINATH KUARI v. DEBI BAKSHI RAI**

[I. L. R., 3 All., 757]

282. — *Application to postpone sale.*—Certain lands having been attached in execution of a decree, the judgment-debtor applied to the Court to postpone the sale of some of the lands until others had first been sold. The vakeel for the decree-holder consented in part to this application, but insisted that certain other land should also be sold in the first instance. Held that this act of the vakeel was a sufficient application to the Court to take a step in aid of execution within the meaning of art. 179 of sch. II of the Limitation Act, 1877. **DHARANAMMA v. SUBBA** . I. L. R., 7 Mad., 308

See **VELLAYA v. JAGANATHA**

[I. L. R., 7 Mad., 307]

283. — *Application to postpone sale on consent of parties.*—Application for execution of a decree was made on the 22nd November 1875, and in pursuance of such application certain property belonging to the judgment-debtor was advertised for sale on the 27th March 1876. On the latter date the parties to such decree made a joint application in writing to the Court, wherein it was stated that the judgment-debtor had made a certain payment on account of such decree, and the decree-holders had agreed to give him four months' time to pay the balance thereof, and it was prayed that such sale might be postponed and such time might be granted. The Court on the same day made an order on such application postponing such sale. The next application for execution of such decree was made on the 17th January 1879. The lower Appellate Court held, with reference to the question whether such application had been made within the time limited by law, that it had been so made, as under art. 179 (6), sch. II of Act XV of 1877, such time began to run from the date of the expiration of the period of grace allowed to the judgment-debtor under the application of the 27th March 1876. Held that art. 179 (6) had not any relevancy to the present case; but inasmuch as the proceedings of the 27th March 1876 might be considered as properly constituting a “step in aid of execution” within the meaning of art. 179 (4), the application of the 17th January 1879 was within time. **SITLA DIN v. SHEO PRASAD** . I. L. R., 4 All., 60

284. — *Oral application for proclamation of sale.*—An oral application, on a sale of immoveable property in the execution of a decree having been adjourned for the fixing of a

LIMITATION ACT, 1877—continued**4 STEP IN AID OF EXECUTION—continued**
and placed under the management of the Collector,

and to be allowed to continue the execution proceedings. In 1880 C applied to the Court under s. 243 of the Code of Civil Procedure (Act XIV of 1857) to issue notice to D as B's heir and legal representative.

[I L R, 19 Bom, 231]

of art 179 of the Limitation Act. An application by the judgment creditor for the execution of

[I L R, 24 Calc, 778
1 C W N, 676]

302 ———— *Application by decree holder to be put in possession of property which he has purchased at a sale in execution of his decree*—An application made by a decree holder to be put into possession of property which he has purchased at an auction sale held in execution of his decree as a step in aid of execution of that decree, and would afford the decree holder a fresh starting point for limitation. *Sujan Singh v Hira Singh* I L R, 12 All 349 referred to. *Moti Lal v Makund Singh* I L R, 19 All, 477

LIMITATION ACT, 1877—continued**4 STEP IN AID OF EXECUTION—continued**

Sariatoolla Moalla v Raj Kumar Roy
[I L R, 27 Calc, 709
4 C W N, 681]

(e) CONFIRMATION OF SALE

303 ———— *Date from which*

order BROJUNGGOYA DASSEE v SHONA MOOKHERJEE
DASSEE 15 W R, 15

304 ———— *Proceeding to keep decree in force—Where there is a sale in execution,*

[8 W R, 359]

JUGGUT MORINEE BISSE v RAM CHUND GHOSH
[9 W R, 103]

SHIB RAM DEY v BANER MADRAS MITTER
[11 W R, 117]

305 ———— *Proceeding to keep decree in force—Held a confirmation of a sale in execution by the Court was a proceeding under s. 20, Act XIV of 1859 and sufficient to keep a decree in force which had been obtained by the purchaser*
CHOWDHRY SHEIKH WAHID ALI v MULLICK ENAYAT HOSSAIN ALI
[12 B L R, 500 20 W R, 31]

GOBIND CHUNDER CHOWDHRY v JONUJALNISSE
BISSE 13 W R, 156

306 ———— *Proceeding to keep*

GUNGA BISHEN CHUND v DHIRAJ MAHTAB CHAND
BAHADUR

[13 B L R, 503 note 10 W R, 224]

307 ———— *Proceeding to keep decree in force—Where the decree holder takes no step whatever to cause an execution sale to be confirmed the confirmation of the sale by the Court cannot be regarded as a proceeding on his part towards enforcing the decree*
MULLICK ENAYAT ALI v WAHED ALI 13 W R, 315

308 ———— *Proceeding to keep decree in force—Confirmation of a sale in execution of a decree by the Court of its own motion and drawing out the proceeds of sale by the execution-*

LIMITATION ACT, 1877—continued.

4. STEP IN AID OF EXECUTION—continued.

the meaning of the Limitation Act, sch. II, art. 179. *Three Mahomed v. Mahomed Mabood*, I. L. R., 9 Cal., 730, and *Ananda Mohan Roy v. Hara Sundari*, I. L. R., 23 Cal., 196, referred to. *Bansi v. Sikree Mal*, I. L. R., 13 All., 211, dissented from. *RAGHUNUNDUN MISSEER v. KALLYDUT MISSEER* [I. L. R., 23 Cal., 690]

292. — Application by decree-holder for leave to bid at the auction-sale.—An application by a decree-holder for leave to bid at the sale of his judgment-debtor's immoveable property is an application to the Court to take a step in aid of execution of the decree, and falls within the words of art. 179, cl. 4, of the Limitation Act (XV of 1877). *VINAYAKRAO GORAL DESHMUKH v. VINAYAK KRISHNA DHEMRI* [I. L. R., 21 Bom., 331]

293. — Application by the decree-holder for leave to bid at a sale in execution of his decree—Civil Procedure Code, 1882, s. 294.—An application for leave to bid at a sale in execution under s. 294 of the Code of Civil Procedure is an application to take some step in aid of the execution of the decree within the meaning of art. 179 (4) of the second schedule of the Indian Limitation Act, 1877. *Bansi v. Sikree Mal*, I. L. R., 13 All., 211, followed. *Raghuandan Misser v. Kallydut Misser*, I. L. R., 23 Cal., 690, dissented from. *DALEL SINGH v. UMRAO SINGH* [I. L. R., 22 All., 399]

294. — Application to receive poundage fee—Application for the return of a decree partially executed by the Court where transferred for execution—Civil Procedure Code (1882), s. 223.—Neither an application by a decree-holder to receive poundage fees from him in respect of some of his judgment-debtor's property purchased by himself, nor an application for the return to the decree-holder of a decree made to a Court to which it has been transferred for execution, and by which it has been partially executed, is a step in aid of execution within the meaning of the Limitation Act, sch. II, art. 179, cl. 4. *Krishnayyar v. Venkayyar*, I. L. R., 6 Mad., 81, distinguished. *AGHORE KALI DEBI v. PROSUNNO COOMAR BANERJEE* [I. L. R., 22 Cal., 827]

295. — Application to receive poundage fee—Application to set off the purchase-money against the decree, instead of paying it into Court.—Neither an application by a decree-holder to receive a poundage fee from him in respect of the judgment-debtor's property purchased by himself, nor an application by him to be allowed to set off the purchase-money against the decree, instead of paying it into Court, is a step in aid of execution within the meaning of the Limitation Act, sch. II, art. 179, cl. 4. *Aghore Kali Debi v. Prosunno Coommar Banerjee*, I. L. R., 22 Cal., 827, followed. *Radha Prosad Singh v. Sandar Lal*, I. L. R., 9 Cal., 644, distinguished. *ANANDA MOHAN ROY v. HARA SUNDARI* . . . I. L. R., 23 Cal., 196

LIMITATION ACT, 1877—continued.

4. STEP IN AID OF EXECUTION—continued.

296. — Deposit of process-fee.—A deposit of a process-fee is a step in aid of execution within cl. 4 of s. 179 of sch. II of the Limitation Act. *Ambica Pershad Singh v. Surdhari Lal*, I. L. R., 10 Cal., 851, referred to. *NAHENDRA NATH PAHARI v. BHUPENDRA NARAIN ROY* . . . I. L. R., 23 Cal., 374

297. — Payment of process-fee.—Quare—Whether the payment of bhatta is sufficient proof of an application to the Court to take the step in respect of which the bhatta is paid. Mere payment of a process-fee under circumstances from which no application can be inferred does not satisfy the requirements of the article. *TRIMBAK BAPUJI PATVARDHAN v. KASHI-NATH VIDYADHAR GOSAVI* I. L. R., 22 Bom., 722

298. — Payment of process-fee.—The mere payment of process-fee for the issue of notice for the purpose of an inquiry under s. 287 of the Code of Civil Procedure, or the payment of costs for the issue of a proclamation of sale, unaccompanied by any application, will not operate to give a fresh starting-point for limitation within the meaning of art. 179 (4) of the second schedule to the Indian Limitation Act, 1877. *Har Sahai v. Sham Lal*, *Weekly Notes*, All. (1900), 88, and *Dwarkanath Appaji v. Anandao Ramchandra*, I. L. R., 20 Bom., 179, followed. *Barnha Nand v. Sarbishwara Nand*, *Weekly Notes*, All. (1893), 247, distinguished. *Radha Prosad Singh v. Sundar Lal*, I. L. R., 9 Cal., 644, dissented from. *THAKUR RAM v. KATWARU RAM*

[I. L. R., 22 All., 358]

299. — Payment of deficient Court-fee.—An application for execution of a decree was presented on the 17th July 1890. A notice under s. 248 of the Code of Civil Procedure (Act XIV of 1882) was issued on the 18th July 1890. The process-fee for service of the notice being deficient, the decree-holder paid the deficiency on the 29th August 1890. On the 22nd August 1893, the decree-holder presented a fresh application for execution. Held that the second application for execution was time-barred. The payment of the additional Court-fee was not "a step in aid of execution of a decree" within the meaning of cl. 4, art. 179 of sch. II of the Limitation Act (XV of 1877). *DWARKANATH APPAJI v. ANANDRAO RAMCHANDRA* . . . I. L. R., 20 Bom., 179

300. — Applications to be substituted on the record as a party and for notice of execution to issue to representative of judgment-debtor—Civil Procedure Code (1882), s. 230.—Application for execution of decree—Continuous proceedings.—A obtained a decree against B upon an award, which directed that the sum of Rs. 1,840 awarded to A should be recovered with interest by attachment of the mortgaged property and not by a sale, except in case of its being held that the property was not liable to attachment. On the 12th October 1874 A applied for execution of the decree, and thereupon the mortgaged property was attached.

LIMITATION ACT, 1877—continued.**5 NOTICE OF EXECUTION—continued**

s. 216 of the Civil Procedure Code, and the service of it by the officer of the Court **RAM SAHAI SINGH v SHEO SAHAI SINGH** GURUDAS AKHULI v GORIN NAME **B L R, Sup Vol, 402**

[1 Ind. Jur., N. S., 421 & W. R., Mis, 98]

TABRUR SINGH v MOTER SINGH 9 W. R., 443

RAJEEB LOCHUN SAHA CROWDERY v MASSEY [18 W. R., 183]

MARHOMED BAKER KHAN v SHAM DEY KOER [12 W. R., 2]

SUBHAN ALI v SUFAR ALI . 24 W. R., 227

Contra, **TABRUR SINGH v MOTER SINGH** [8 W. R., 308]

SHAM CHAND BYSACK v LUCAS [5 W. R., Mis, 5]

GIRJANUND OOPADHYA v CRUNDER BINODE OOPADHYA 5 W. R., Mis, 5

KISTO KANT BURAL v NISTABINEE DEBIA [8 W. R., 268]

MAZEDOOVISSA BARESEN v FUEZEN REBER [4 W. R., Mis, 8]

318. Code, s. of a net bond fac.

was sufficient to keep a decree alive **DHIRAJ MAHTAB CHAND BAHADUR v LAHRI BIKI**

[8 B. L. R., Ap, 140]

BRUGOBUTTY v MOTER CHAND PATERDUNDO [8 W. R., Mis, 97]

ORHOX CHURN DUTT v MODHOO SOODUN CHOW DERY 9 W. R., 330

CHILICANT BAKARAYENINGARU v PILEARY SETHI RAJAVULU NAIDU 5 Mad, 100

MAKOOTDONATH BHADCORY v SHIB CHUNDER BHADCORY 19 W. R., 103

319. Issue of notice under s. 216, Civil Procedure Code 1859—A notice issued within time under Act VIII of 1859, s. 210, and actually served upon the judgment debtor constituted a starting point for the commencement of a new period of limitation under Act IX of 1871, sch II art 167, any question as to its *bona fides* notwithstanding **KOOB BERNARF LALL v GIRDHAREE LALL** 23 W. R., 484

SHEO SAROF SINGH v BIRI BENARY SINGH [23 W. R., 195]

LIMITATION ACT, 1877—continued**5 NOTICE OF EXECUTION—continued**

the same matter **ESHAN CHUNDER BOSH v PRAN-NATH NAG**

[14 B. L. R., F. B., 143. 22 W. R., 512]

ROHINI NUNDUY MITTER v BROJORAN CHUNDER ROY 14 B. L. R., 144 note 22 W. R., 154

SHURUT CHUNDER SEY v ABDOL KHYR VAHOMED MOHUTRESSUR BILLAU 23 W. R., 327

321. Issue of notice of execution—Execution partly had under Act XIV of 1859—In an execut on case, in which the notice was served before but the application for execution was made after the passing of the present law of limitation—*Held* that the period within which proceeding should be taken must be reckoned from the date of the notice and not from the date of application **BENUL DOSS v IKBAL NARAIN** [25 W. R., 249]

RUGHONATH DASS v SHIROMONER PAT MOHA-DEBER 24 W. R., 30

322. Issue of notice of execution—When proceedings have been taken subsequent to an application to execute a decree and to the issue of notice, limitation does not run from the
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y be.

[22 W. R., 546]

323. Notice to judgment debtor of execution of decree—Civil Procedure Code, 1859 ss 212, 216—On the 3rd March 1875, an application was made by a decree holder to the Court executing the decree which did not as required by s. 212 of Act VIII of 1859 state the mode in which the assistance of the Court was required, whether by the arrest and imprisonment of the judgment debtor or attachment of his property, but

SOY and OLDFIELD, JJ, that for the purposes of art 167, sch II of Act IX of 1871, the application

[1 L. R., 1 All, 676]

324. Service of notice of execution—Application for execution of a decree was made on the 10th November 1869, and on the 7th November 1869 notice issued under s. 216 of the Civil Procedure Code, 1859. Again, on the 4th February 1873, application was made for execution, and notice was issued on the 12th February 1873

LIMITATION ACT, 1877—continued.**4. STEP IN AID OF EXECUTION—continued.**

309. — *Application to execute decree—Order confirming sale.*—The mere act of the Court confirming a sale in execution, which act is not shown to have been performed at the instance of the decree-holder upon petition or application, is not an application to the Court to take some step in aid of execution within the meaning of cl. 4, art. 179, sch. II of Act XV of 1877. **MOTENDRO CHANDRA GHOSE v. MOHENDRO NATH GHOSE**
[10 C. L. R., 330]

310. — *Proceeding to enforce decree—Application for copy of decree.*—On the 19th of March 1880 a decree for money was passed, and on the 19th of February 1881 certain property belonging to the judgment-debtor was sold in execution thereof. On the 22nd of April 1881 the Court passed an order confirming the sale. On the 10th of January 1882 the decree-holder applied to the Court for a copy of the decree, in order that he might make a fresh application for execution. On the 28th of March 1884 he applied for execution. The judgment-debtor appeared and pleaded that execution was barred by limitation. The Court of first instance held that execution was not barred on the ground that the passing of the order of the 22nd of April 1881 was sufficient, under the provisions of art. 179, cl. 4, of the Limitation Act of 1877, to keep the decree alive. The lower Appellate Court also held that execution was not barred by limitation, but solely on the ground that the application of the 10th of January 1882 was sufficient to keep the decree alive. It did not appear that the order of the 19th of February 1881 was passed in consequence of any application by the decree-holder, and neither the application of the 10th of January 1882 nor any copy thereof was put in evidence on the present application. *Held*, on appeal to the High Court, that the execution of the decree was barred by limitation. **RAJKUMAR BANERJI v. RAJLAKHI DABI**
[I. L. R., 12 Calc., 441]

(f) MISCELLANEOUS ACTS OF DECREE-HOLDER.

311. — *Precept to Collector under Beng. Reg. XLVIII of 1793, s. 24, cl. 2.*—A precept to the Collector under cl. 2, s. 24, Regulation XLVIII of 1793, for mutation of names in the terms of a decree was a process to enforce the decree, and could not, under s. 20, Act XIV of 1859, be issued after a lapse of three years from the passing of the decree. **NANERBI KUNWAR v. KASTURI KUNWAR** . . . 4 B. L. R., A. C., 581
S. C. NAUNHER KOONWAR v. KUSTOOREE KOONWAR . . . 13 W. R., 141

312. — *Confiscation of decree—Correspondence relating to right of Government.*—Where a decree had awarded a sum as costs to one who turned a rebel.—*Held* that correspondence relating to the asserted right of Government to get the sum to be realized by the execution of decree did not amount to a proceeding to save limitation. **AMEENOODDEEN, KHAN v. MOOZUFFER HOSSEIN KHAN** . . . 3 Agra, Mis., 5

LIMITATION ACT, 1877—continued.**4. STEP IN AID OF EXECUTION—concluded.**

313. — *Application for certificate of administration.*—The petitioners, as widow and adopted son of a decree-holder, applied by petition to the District Munsif for execution of the decree on the 17th June 1864. The District Munsif made an order stating that execution would not be granted unless the petitioners obtained a certificate from the District Court under Act XXVII of 1860. In August 1864 an application was made for a certificate to the Civil Court, and an order was made refusing the application, and the order was affirmed on appeal. A second application was made for execution in July 1867. *Held* that the right of the petitioners to obtain execution was barred by s. 20, Act XIV of 1859. *Quære*—Whether a suit on the decree could be maintained. **LAKSHAMMA v. VENKATARAGAVA CHARITAR** . . . 4 Mad., 89

314. — *Application in execution proceedings to have witnesses summoned.*—An application by a decree-holder in the course of an investigation into an objection to the attachment of property to have his witnesses summoned is an application within the meaning of cl. 4, art. 179, sch. II of the Limitation Act, 1877. **ALI MUHAMMAD KHAN v. GUR PRASAD** . . . I. L. R., 5 All., 344

315. — *Application for certificate showing necessity of copy of revenue register in order to obtain copy—Civil Procedure Code, 1877, s. 230.*—An application by a judgment-creditor to the Court which passed the decree for a certificate that a copy of a revenue register of the land is necessary to enable him to obtain such copy from the Collector's office, and thereupon to execute the decree by attaching the land, is a step in aid of execution within the meaning of cl. 4, art. 179 of sch. II of the Limitation Act, 1877. *Per INNES, J.*—The right to execute decrees having been curtailed by s. 230 of the Code of Civil Procedure, 1877, the provisions of the Limitation Act should be construed as far as possible so as to prevent the defeat of *bond fide* endeavours to secure the fruits of a decree once obtained. **KUNHI v. SESHAGIRI** . . . I. L. R., 5 Mad., 141

316. — *Notice not to pay amount decreed—Deduction of time decree is under attachment.*—A notice or order to a judgment-debtor, A, not to pay the amount decreed to his judgment-creditor, B, will not in any case serve to keep the decree alive in favour of C, a judgment-creditor of B, at whose instance the notice or order is issued, much less in favour of other judgment-creditors of B, with whom A had nothing to do. **AZMUDDIN v. MATHURADAS GOVARDHANDAS GULABDAS** . 11 Bom., 206

5. NOTICE OF EXECUTION.

317. — *cl. 5—Issue of notice under s. 216, Civil Procedure Code, 1859.*—The word "proceeding" in s. 20 of Act XIV of 1859, included any *bond fide* application, or the last act done by the party, by the Court, or by the officer of the Court, in furtherance of such application; hence it included the issue by the Court of a notice under

LIMITATION ACT, 1877—continued.**6 ORDER FOR PAYMENT AT SPECIFIED DATE—continued**

I L R 7 Mad 80 and 1548 Khan v Sardar Khan I L R 7 Mad 83 distinguished LAKSHMIHAI BAPUJI OKA v MADHAYAJI BAPUJI OKA
[I L R, 12 Bom, 65]

present application was not barred by limitation
KUPPU AMMAL v SAMINATHA AYYAR

[I L R, 18 Mad, 482]

333 ————— *Decree for redemption—Decree not specifying result of non payment of mortgage debt within the time prescribed thereby for payment—Where a decree for redemption of a mortgage stated that the amount due under the mortgage should be paid within four months but*

prescribed by art 179 sch II of Act VI of 1877
BANDHU BHAGAT v VUHAMVAD TAQI

[I L R, 14 All, 350]

334 ————— *Decree for redemption*

give back to them possession of the land till that

was therefore to be taken as operating from its date and to be enforceable only within three years from that time unless kept alive by application for execution made according to law within the prescribed periods *MARUTI v KRISHNA*

[I L R, 23 Bom, 592]

See *GAN SAVANT BAL SAVANT v NARAYAN GHOND SAVANT*

[I L R, 23 Bom, 467]

MALONI v SAGARI

[I L R, 13 Bom, 567]

and *NARAYAN GHOND v ANANDHAM KOTIRAM*

[I L R, 16 Bom, 460]

LIMITATION ACT, 1877—continued**6 ORDER FOR PAYMENT AT SPECIFIED DATE—continued**

335 ————— *Civil Procedure Code 1882, s 210—Time granted to debtor—Decree not altered—On the 26th of June 1878 a judgment-debtor applied under s 210 of the Code of Civil Procedure, for two years time to pay the amount of the decree which was dated 12th March 1878. No such time being given to the judgment creditor,*

not barred by limitation *TATA CHARLU v KOVALA DALA RAVACHANDRA REDDI*

[I L R, 7 Mad, 152]

336 ————— *Civil Procedure Code Act XIV of 1882 s 210—Petition of judgment debtor amounting to fresh decree—On the*

by instalments having resulted in its being registered and the proceedings struck off amounted to a direction that the decretal amount be paid by instalments as stipulated in the petition, and that this being so there was a decree passed on that date

337 ————— *Application for execution of decree—Order on petition to pay by instalments*

of the instalments mentioned in the petition were endorsed on the decree by one of the amlahs of the

LIMITATION ACT, 1877—continued.**5. NOTICE OF EXECUTION—continued.**

under s. 216. A subsequent application for execution was made on the 31st August 1874, and the order for notice to issue under s. 216 was made on the same day. The question raised in appeal against the order to issue execution was whether the plaintiff's right to execution was barred, and had been so when the application, dated 31st August 1874, for execution was made. *Held* on appeal by the High Court (KERNAN and KINDERSLEY, JJ.) that, as the application for execution on the 4th February 1873, being more than three years after the date of issuing the last prior notice under s. 216—*viz.*, 27th November 1869—was late under art. 167, paragraph 5, Act IX of 1871, execution was barred by limitation at and before the date of that application, and that this bar was not removed by the circumstance that the judgment-debtor had allowed the service of the notice on him in February 1873 to pass unchallenged. *Chilicany v. Rajarulu Naidu, 5 Mad., 100*, distinguished. *PROBHACARA ROW v. POTANNAH*

[I. L. R., 2 Mad., 1

325. ——— *Service of notice of execution—Civil Procedure Code, 1859, s. 216.*—On the presentation of the last of a series of applications made for the execution of a decree, the Court is competent to consider the question whether, on the date of making a prior application for execution, the decree sought to be enforced was barred by limitation, and that notwithstanding the fact that notice of such prior application had been served on the judgment-debtor under s. 216 of Act VIII of 1859. *UNNODA PERSAD ROY v. KOORPAN ALLY*

[I. L. R., 3 Cal., 518; 1 C. L. R., 408

326. ——— *Civil Procedure Code, 1882, s. 248—Notice of valid or invalid application.*—The issuing of a notice under s. 218 of the Code of Civil Procedure gives a fresh starting point for limitation under art. 179, cl. 5, of sch. II of the Limitation Act, 1877, whether such notice is issued on a valid or an invalid application for execution. *DHONKAL SINGH v. PHAKKAR SINGH*

[I. L. R., 15 All., 84

327. ——— Where an application for notice to issue under s. 248 of the Civil Procedure Code may be found defective, but the defects were held to be not material,—*Held* that, even if such application was defective as an application for execution of the decree, it was still an application to take some step in aid of execution, namely, to issue a notice under s. 248, which was necessary, the decree having been passed more than a year before, and such notice having been issued, it kept the decree alive. *Behari Lal v. Salik Ram, I. L. R., 1 All., 675*, and *Dhonkal v. Phakkar, I. L. R., 15 All., 84*, referred to. *GOPAL CHUNDER MANNA v. GOSAIN DAS KALAY*

[2 C. W. N., 556

328. ——— *"Date of issuing notice," Meaning of the words—Execution of decree.*—Art. 179, cl. 5, of the Limitation Act (XV of 1877) applies only where the notice under s. 248 of the Code of Civil Procedure (Act XIV of 1882) has been

LIMITATION ACT, 1877—continued.**5. NOTICE OF EXECUTION—concluded.**

actually issued. If no notice is issued, time cannot be counted from the date of the order of the Court; though it may be that where a notice has been issued, the date of its issue would be the date on which the Court ordered its issue. *HARI GANESH v. YAMUNABAI*

I. L. R., 23 Bom., 35

6. ORDER FOR PAYMENT AT SPECIFIED DATE.

329. ——— cl. 6—*Civil Procedure Code, s. 230 (b)—Execution of decree—Annual payments—"Certain date."*—A decree which directs payment to be made annually to the decree-holder is not a decree which directs payment of money to be made at a certain date within the meaning of s. 230 of the Code of Civil Procedure or cl. 6 of art. 179 of sch. II of the Limitation Act, 1877. Where a decree directed annual payments to be made, and the decree-holder applied for and obtained payment of the money due for 1877 and 1878 in March 1879 by execution, and then applied in July 1882 for the sums due for 1880 and 1881,—*Held* that this application was barred by limitation. *YUSUF KHAN v. SIRDAR KHAN*

I. L. R., 7 Mad., 83

330. ——— *Decree for periodical payments.*—If it can be gathered from a decree that payments are directed to be made on dates or at periods which are sufficiently indicated by the terms of the decree, the requirement of Limitation Act, sch. II, art. 779, cl. 6, are satisfied. *KAVERI v. VENKAMMA*

I. L. R., 14 Mad., 396

331. ——— *Execution of decree—Maintenance—Decree for payment of an annuity without specifying date of payment—Default in paying such annuity—Enforcement of payment by execution of decree—Computation of time.*—A Hindu widow obtained a decree, dated 7th September 1865, directing that a sum of Rs 36 should be paid to her every year on account of her maintenance. The judgment-debtors paid the annuity for some years. In 1881 the widow applied for execution of the decree, and recovered three years' arrears. In 1885 payments having again fallen into arrear, she again applied for execution, but her application was rejected as barred by limitation, having been made more than three years after the last preceding application. *Held* that the application was not time-barred. The decree created a periodically recurring right. Though no precise date was specified in the decree for payment of the annuity, the judgment-debtors were liable to make the payment on the day year from its date, and thenceforward on the corresponding date year after year. The decree was, as to each year's annuity, to be regarded as speaking on the day upon which for that year it became operative, and separately for each year. The right to execute occurring on a particular day, limitation should be computed from that day should the judgment-debtor fail to obey the order of the Court. *Sakharam Dikshit v. Ganesh Satha, I. L. R., 3 Bom., 193*, followed. *Subhanatha Dikshatar v. Subba Lakshmi Ammal,*

LIMITATION ACT, 1877—continued.**6 ORDER FOR PAYMENT AT SPECIFIED DATE—continued**

I L R 7 Mad 80 and 1 usof Khan v Sirdar Khan I L R 7 Mad 83 distinguished LAKSH MIBAI RAJPUT OKA : MADHAVRAY RAJPUT OKA
[I L R, 12 Bom, 65]

missed as being barred by limitation. *Held* that the present application was not barred by limitation.
KUTRU ANNAL : SAMINATHA AYYAR

[I L R, 18 Mad, 482]

333 ————— *Decree for redemption—Decree not specifying result of non payment of mortgage debt : all in the time prescribed thereby for payment—Where a decree for redemption of a mortgage statd that the amount due under the mortgage should be paid within four months but omitted to state what the result would be if the mortgage debt was not so paid—Held* that it was competent to the decree holder to execute such a decree at any time within the period of limitation prescribed by art 179 sch II of Act XV of 1877.
BANDHU BRAGAT v MUHAMMAD FAZI

[I L R, 14 All, 350]

334 ————— *Decree for redemption*

of the decree praying for possession alone on the ground that the redemption money had been paid off by their payments of assessment etc on behalf of

cut on male according to law within the prescribed periods. *MAHUTI : KRISHNA*

[I L R, 23 Bom, 592]

See *GAN SAVANT BAL SAVANT : NARAYAN DHOND SAVANT*

[I L R, 23 Bom, 467]

MAHOLI : SAGARI . [I L R, 13 Bom, 567]
and *NARAYAN GOVIND : ANANDRAM KOSIRAM*

[I L R, 16 Bom, 480]

LIMITATION ACT, 1877—continued**6 ORDER FOR PAYMENT AT SPECIFIED DATE—continued**

335 ————— *Civil Procedure Code 1882 s 210—Time granted to debtor—Decree not altered—On the 26th of June 1878 a judgment debtor applied under s 210 of the Code of Civil Procedure for two years time to pay the amount of the decree which was dated 12th March 1878. It had been given to the plaintiff creditor*

not barred by limitation. *TATA CHARLU v HONADALA RAMACHANDRA REDDI*

[I L R, 7 Mad, 153]

336 ————— *Civil Procedure Code Act XIV of 1882 s 210—Petition of judgment debtor amounting to fresh decree—On the*

the 17th July 1881 the judgment debtor with the consent of the decree holder applied for time to pay the balance due till the 8th September 1881 and

by instalments having resulted in its being registered and the proceedings struck off amounted to a direction that the decretal amount be paid by instalments as stipulated in the petitions and that this being so there was a decree passed on that date under the provisions of the second paragraph of s 210 of the Code of Civil Procedure of which the decree holder was entitled to have execution. *JMORI SAHU : BRUGUY GIR*

[I L R, 11 Cal, 143]

of the instalments mentioned in the petition were endorsed on the decree by one of the amils of the

LIMITATION ACT, 1877—continued.**G. ORDER FOR PAYMENT AT SPECIFIED DATE—continued.**

I. L. R., 7 Mad., 50, and Yusuf Khan v. Sirdar Khan, I. L. R., 7 Mad., 83, distinguished. LAKSHMIDAI BARUJI OSA v. MADHAYARAJ BARUJI OSA
[I. L. R., 12 Bom., 65]

332. ——— *Application for execution of maintenance decree.*—On an application made in 1891 for the execution of a decree passed in 1870, it appeared that the decree directed the payment of maintenance to the plaintiff annually on a specified date, and the present application related to the period of three years from 1888 to 1891. There had been an application for execution in 1873. The next application was made in 1879, and it was dismissed at the instance.

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mortgage stated that the amount due under the mortgage should be paid within four months, but omitted to state what the result would be if the mortgage debt was not so paid.—*Held* that it was

ation Act of 1877, inasmuch as, when the Limitation Act, 1877, came into force (October 1, 1877), the application was not barred under cl. 6, art. 167, sch. II of the Limitation Act, 1871. *Held* also that the provision as to the whole amount becoming recoverable at once if default was made, did not affect

[I. L. R., 3 Mad., 256]

execution within three years from the date of the first default, the decree was barred *SHIB DAT v. KALKA PRASAD* I. L. R., 2 All., 443

347. ——— and art. 75.—*Decree directing payment to be made at a certain date.*—*L* obtained a decree against *U*, dated the 24th September 1867, for possession of a certain estate, subject to this provision, viz., that if *U* paid in cash

LIMITATION ACT, 1877—continued.**G ORDER FOR PAYMENT AT SPECIFIED DATE—continued.**

the decree, which was dated 12th March 1878.

9th of July 1882 the decree holder applied for execution of the decree. *Held* that the application was not barred by limitation *TATA CHALLU v. KOYALATA RAMACHANDRA REDDI*

[I. L. R., 7 Mad., 153]

336. ——— *Civil Procedure Code, Act XIV of 1882, s. 210—Petition of judgment-debtor amounting to fresh decree.*—On the 23rd February 1878 an application was made for execution of a decree, dated the 3rd December 1877,

the balance due till the 8th September 1871, and also struck off. On the 1st such proof, in order to discharge the plaintiff's plea of limitation, notwithstanding such payments had not been certified *Fakir Chand Bose v. Madan Mohan Ghose, 4 B. L. R., F. B., 130, followed. SHAM LAL v. KANAKIA LAL* I. L. R., 4 All., 318

349. ——— *Decree payable by instalments.*

of the decree for the larger amount It appeared

7th May 1877 was struck off the file The decree-

ber 1876 The Court refused to allow execution to issue for such amount, but allowed it to issue for

LIMITATION ACT, 1877—continued.**5. NOTICE OF EXECUTION—continued.**

under s. 216. A subsequent application for execution was made on the 31st August 1874, and the order for notice to issue under s. 216 was made on the same day. The question raised in appeal against the order to issue execution was whether the plaintiff's right to execution was barred, and had been so when the application, dated 31st August 1874, for execution was made. *Held* on appeal by the High Court (KERNAN and KINDERSLEY, JJ.) that, as the application for execution on the 4th February 1873, being more than three years after the date of issuing the last prior notice under s. 216—viz., 27th November 1869—was late under art. 167, paragraph 5, Act IX of 1871, execution was barred by limitation at and before the date of that application, and that this bar was not removed by the circumstance that the judgment-debtor had allowed the service of the notice on him in February 1873 to pass unchallenged. *Chilicany v. Rajavulu Naidu*, 5 Mad., 100, distinguished. *PROBHACARA ROW v. POTANNAH*

[I. L. R., 2 Mad., 1

325. — Service of notice of execution—Civil Procedure Code, 1859, s. 216.—

On the presentation of the last of a series of applications made for the execution of a decree, the Court is competent to consider the question whether, on the date of making a prior application for execution, the decree sought to be enforced was barred by limitation, and that notwithstanding the fact that notice of such prior application be . . .

v. GURDHAR . . . 6 Bom., A. C., 45

RAM SUDOX GHOSE v. RAJBULLUBH SAHA

[15 W. R., 547

TINCOWRIE DOSSEE v. UMBIKA CHURN ROY CHOWDHRY . . . 23 W. R., 41*SHEO JALUN v. GUNESH* . . . 2 Agra, 237*PANAMOHAND VALAD SURAJMAL v. BHIVRAJ VALAD DASHEAT* . . . 6 Bom., A. C., 38**340. — Execution of decree**

for maintenance payable by instalments.—Process of execution cannot always be issued for three years' arrears under a decree directing annual payment of money for a series of years. The petitioner, who had obtained a decree for an annual sum for maintenance during her life, alleged satisfaction of the decree up to a period less than three years from the date of the application for execution of the decree. The Judge was not satisfied of the alleged satisfaction, and dismissed the application for execution. *Held* that the petitioner was entitled to execution of the decree at any time from the date at which the first instalment became due, but that she was not entitled to have process of execution issued within three years from the date at which the second instalment or subsequent instalments became due. *LAKSHMI ANMAL v. SASHADRY AIFANGAR* . . . 4 Mad., 275

See SINTHAYER v. THANAKAPUDAYEN

[4 Mad., 183

341. — Execution of decree payable by instalments.—The decree provided that the amount should be paid in three instalments, and

LIMITATION ACT, 1877—continued.**5. NOTICE OF EXECUTION—concluded.**

actually issued. If no notice is issued, time cannot be counted from the date of the order of the Court; though it may be that where a notice has been issued, the date of its issue would be the date on which the Court ordered its issue. *HARI GANESH v. YAMUNABAI* . . . I. L. R., 23 Bom., 35

6. ORDER FOR PAYMENT AT SPECIFIED DATE.

329. — cl. 6—Civil Procedure Code, s. 230 (b)—Execution of decree—Annual payments—"Certain date."—A decree which directs payment to be made annually to the decree-holder is not a decree which directs payment of money to be made at a certain date within the meaning of s. 230 of the Code of Civil Procedure or cl. 6 of art. 179 of sch. II of the Limitation Act, 1877. Where a decree directed annual-payments to be made, and the decree-holder applied for and obtained payment of the money due for 1877 and 1878 in March 1879 by execution, and then applied in July 1882 for the sums due for 1880 and 1881.—*Held* that this application was barred by limitation. *YUSUF KHAN v. SIRDAR KHAN* . . . I. L. R., 7 Mad., 83

330. — Decree for periodical payments.—If it can be shown from a decree that subsequent payments were made and accepted, in December 1867 and January 1868 the decree-holder applied to execute the decree and realize the whole amount of the bond. The lower Appellate Court, holding that time ran from the first default in August and September 1864, dismissed the application. *Held* by the High Court on appeal that the application was not barred by s. 20, Act XIV of 1859, and that the time ran from January and February 1865. *UPENDRA MOHAN TAGORE v. TAKALIA BEPARI*

[2 B. L. R., A. C., 345

S. C. WOOPENDRO MOHUN TAGORE v. TAKALIA BEPAREE . . . 11 W. R., 570

343. — Decree payable by instalments—Limitation Act, 1871, art. 75.—A decree payable by instalments, with a proviso that, in default of payment of any one instalment, the whole amount of the decree shall become payable at once, is barred, if application for execution be not made within three years from the date on which any one instalment fell due, and was not paid. The payment of instalments subsequent to default in payment of the first instalment at the date specified does not give the judgment-creditor a fresh starting-point. *DULSOOK RATTACHAND v. CHUGON NARRUN*

[I. L. R., 2 Bom., 356

See GUMNA DAMBERSHET v. BHIKU HARIBA

[I. L. R., 1 Bom., 125

344. — Decree for money payable by instalments—Adjustment of decree—Civil Procedure Code, 1859, s. 206.—A decree for the payment of money by instalments directed that, if the judgment-debtor failed to pay two instalments in succession, the decree-holder should be entitled to

LIMITATION ACT, 1877—continued.**6. ORDER FOR PAYMENT AT SPECIFIED DATE—continued.**

failure of any one instalment, the whole is to become due, the question whether the decree holder may waive the benefit of the proviso or must execute his decree within three years from the due date of the first instalment of which default is made in payment is a question purely of construction to be decided on the

On an application payable by or on was barred the judgment execution within default in payment

ment **JUDHISTIR PATRO v. NOBIN CHANDRA KHELA** **I. L. R., 13 Calo., 73**

355. ———— *Decree payable by instalments—Right of decree-holder to waive his right to execute entire decree—Waiver—* A decree dated the 18th July 1883, which was made against D and K in terms of a solahnamah filed

liberty to take out execution and realize the whole amount of the husband's with interest D admitted

have been made, both lower Courts found such payments not to have been proved. On the 1st September 1890, more than three years after the

On second appeal before the High Court it was contended that, although the application to execute the entire decree was barred, yet as the proviso was for the benefit of the decree-holders, they were competent to waive it and claim execution in respect of the instalments that fell due within three years before the date of their application for execution. *Held* that this was not the case made out in the Courts below, and further that the proviso could not be said to be waived, as there had been no acceptance of payment subsequent to the first default, nor a mere abstinence on the part of the decree holder from seeking the benefit of the proviso but, on the contrary, there had been an affirmative act done by him showing that he did not waive the benefit of the proviso but claimed to execute the entire decree **Mon Mohun Roy v. Durga Churn Goose, I. L. R., 15 Calo., 502**, referred to **BIR NABAJY PANDA v. DARPA NABAJY PRODHAN**

[**I. L. R., 20 Calo., 74**

LIMITATION ACT, 1877—continued.**6. ORDER FOR PAYMENT AT SPECIFIED DATE—continued.**

[**356.** ———— *Decree payable by instalments—Default in payment of first instalment—Right of waiver of default—Payment not certifi-*

payable on 30th Cheyt 1225 (26th April 1888), and the other six instalments on the 20th of the months of Magh and Bysack in the three following years. In an application made on 8th February 1892 for execution of the decree, the decree holder stated that only the first instalment had been paid, and asked for execution for the amount remaining due under the decree, and the judgment debt is denied having paid any of the instalments. *Held* that the clause in the decree to the effect that on non payment of an instalment by the specified date it should be in the power of the decree holder to realize the full amount, was not intended to give him the option of waiving the default if he pleased, but that it implied nothing more than the usual condition that on non payment of an instalment the whole decretal amount would become exigible, if therefore the first instalment had not been paid, the application for execution, not having been made within three years from the date when the whole amount became due was barred by art. 179 of sch II of the Limitation Act. **Chandra Kamal Das v. Bissessoree Dasna, 13 C. L. R.,**

v. Nobin Chandra Khela, I. L. R., 13 Calo., 73; Ram Culpoo Bhattachargi v. Ram Chunder Surge, I. L. R., 14 Calo., 352 Mon Mohun Roy v. Durga Churn Goose, I. L. R., 15 Calo., 502 and Bir Narayan Panda v. Darpanarain Prodhan I. L. R., 20 Calo., 4, referred to *Held* further that, although under the provisions of s 258 of the Civil Procedure Code the payment in question, if made could not be recognized as a payment or adjustment of the decree yet it was competent to the decree holder to prove such payment for the purpose of

of 1859), on which the case of **Fakis Chand Bose v. Vaden Mohan Ghose 4 B. L. R., F. R., 130**, was decided **HURRI PERSHAD CHOWDHRY v. NASIR SINGH** **I. L. R., 21 Calo., 542**

357. ———— *Decree payable by instalments with proviso as to execution of entire decree on default in payment of instalments—*

LIMITATION ACT, 1877—continued.**G. ORDER FOR PAYMENT AT SPECIFIED DATE—continued.**

the balance of the instalment for September 1876. *Per STRAIGHT, J.*—That, having by his application of the 7th May 1877 sought to execute the decree for the larger amount payable thereunder in case of default in payment of the instalments of the smaller amount, the decree-holder was not competent afterwards to seek to execute the decree in respect of such instalments; that therefore his application of the 25th August 1878 was not a step in aid of execution of the decree in the shape in which he had previously sought execution, from the date of which limitation could be computed; and that consequently his application of the 8th September 1881 was barred by limitation. *Per CURRIE.*—That the decree-holder was not entitled to recover the balance of the instalment for September 1876, regard being had to the limitation prescribed by No. 179 (b), sch. II of the Limitation Act, 1877. **RADHA PRASAD SINGH v. BRAGWAN LAL** . . . **I. L. R., 5 All., 280**

350. ————— *Decree payable by instalments—Execution of whole decree—Construction of decree—Payments out of Court—Civil Procedure Code, s. 258.*—A decree passed against the defendant in a suit, dated the 13th March 1877, directed "that the plaintiff should recover the decreed money by instalments, according to the terms of the deed of compromise, and he, in case of default, should recover in a lump sum." The compromise mentioned in the decree provided that the amount in dispute should be paid in ten instalments, from 1284 to 1291 Fasli, the first to be paid on the 27th May 1877 (1284 Fasli), and the remaining nine instalments on Jaith Purnamashi of each succeeding Fasli year. On the 1st September 1883 the decree-holders applied for execution of the decree, alleging that the first four instalments had been paid, but not any of the succeeding instalments, and they claimed to recover, under the terms of the decree, the fifth and all the remaining instalments in a lump sum. The judgment-debtors contended that the application was barred by limitation, as they had not paid a single instalment, and more than three years had elapsed from the date of the first default; and that, even if the first four instalments had been paid, such payments could not be recognized by the Court, as they had not been certified. *Held*, reversing the decision of the lower Appellate Court, that if the four annual instalments had not been paid under the decree, the execution of the decree was barred by limitation. *Held* also that recognition of such instalments was not barred by the terms of s. 258 of the Civil Procedure Code. **Shari Lal v. Kanahia Lal, I. L. R., 4 All., 316**, and **Fakir Chand Bose v. Madan Mohan Ghose, 4 B. L. R., F. B., 130**, followed. **ZAHUR KHAN v. BAKHTAWAR** . . . **I. L. R., 7 All., 327**

351. ————— *Decree payable by instalments—Waiver by decree-holder—Payment out of Court—Civil Procedure Code, s. 258.*—An application for execution of a decree payable by instalments was resisted by the judgment-debtor as barred by limitation on the ground that nothing had been paid under the decree, and that the application

LIMITATION ACT, 1877—continued.**G. ORDER FOR PAYMENT AT SPECIFIED DATE—continued.**

was made more than three years after the first instalment fell due. The decree-holder pleaded that he had waived the default in payment of the first instalment by accepting such payment shortly afterwards, and that the application was in time, having been made within three years from the date when the second instalment was due. *Held* that the decree-holder could not raise this plea, as the payment in question had not been certified to the Court executing the decree, and therefore could not, under s. 258 of the Civil Procedure Code, be recognized. **Shari Lal v. Kanahia Lal, I. L. R., 4 All., 316**, and **Zahur Husain v. Bakhtawar, I. L. R., 7 All., 327**, not followed. **MITHU LAL v. KHURATI LAL**
[I. L. R., 12 All., 569]

352. ————— *Debt on decree payable by instalments—Failure to pay—Waiver of default.*—The terms of compromise in a suit for money provided that the debt should be paid by monthly instalments, and that, on the failure to pay any three successive instalments, the entire amount should be recoverable by application to execute the full decree. The decree was dated the 12th June 1875, the first instalment was due in July 1875, and the last in October 1877. Default was made in payment of the first three instalments, but the decree-holder did not apply for execution and accepted subsequent payments. On the 13th December 1879 he applied for execution for the amount then remaining due. *He'd* that the period of limitation prescribed by art. 179, sch. II of Act XV of 1877, began to run on the third default taking place, and that no subsequent payment could stop limitation once begun. **ASHMUTULLAH DALAL v. KALLY CHURN MITTER**
[I. L. R., 7 Cal., 56]

353. ————— *Decree payable by instalments.*—On an application, dated 10th Aughran 1288, for execution of a decree which provided, on the basis of a *kistbundi*, that the amount decreed should be paid in four instalments annually, extending over the years 1284, 1285, 1286, 1287, and that, if there should be default in payment of any instalment, and that instalment should remain unpaid for six months, the whole of the decree should at once become due, it was objected that the application was barred on the ground that the instalments for 1284 not having been paid, the whole amount of decree had become payable within six months for the first default. The application was to recover the instalments due for 1285, 1286, and 1287. *He'd* that the application was not barred, except as to the instalment of 1285, which fell due in Jaith, as it was optional with the decree-holder to realize the whole decree at once upon default being made, or to waive his right to do so and seek to realize instalments as they became due. **ASHMUTULLAH DALAL v. KALLY CHURN MITTER, I. L. R., 7 Cal., 56**, followed. **CHUNDER KOMAL DASS v. BISSASUTTER DASSIA** . . . **13 C. L. R., 243**

354. ————— *Decree payable by instalments—Option to execute—Waiver—Construction of decree.*—Where a decree is made payable by instalments, and contains a provision that, on

LIMITATION ACT, 1877—continued.

7. JOINT DECREES—continued.

taken by the two kept the decrees alive *AZIZUDDIN KHATUN v. SHASHI BHUSHAN BOSE*

[2 B. L. R., Ap, 47: 11 W. R., 343

CHOOA SAHOO v. TRIPPOHA DUTT 13 W. R., 244

statute a point of time from which would run the limitation of three years provided in Act IV of 1871, sch. II, art. 167. *HURUCK ROY v. ZUHOOREE MUL*. 22 W. R., 468

368. ———— Application to execute part of decree—An application to execute an aliquot part of a decree, though irregular and ineffectual for the purpose, must, if made *bona fide* under a misapprehension of the law, be regarded as a proceeding which keeps the decrees alive *KOTIAS KATU GHOSH v. NUTTA SHAMA DASSEE*

[15 W. R., 449

SHIB CHUNDER DASS v. RAM CHUNDER PODDAB 16 W. R., 29

PRAN KISHORE DEB v. KISHORE CHUNDER CHOWDHURY. 18 W. R., 267

DOYA MOYEE DABEE v. NILMONEE CHUCKERBUTTY 35 W. R., 70

LIMITATION ACT, 1877—continued.

7. JOINT DECREES—continued.

AJUDHIA SINGH I. L. R., 1 All., 231

388. ———— Application by one of two joint decree-holders for part execution of

as a whole, preferred after the period of limitation had expired *COLLECTOR OF SHAHJAHANPUR v. SURJAN SINGH* I. L. R., 4 All., 72

389. ———— Application by two of three joint decree-holders for part execution of joint decree—Acquiescence by judgment-debtor in part execution—A decree for money was passed in

or the
Griya
NANDA
1., 282

[I. L. R., 3 Mad., 79

371. ———— Application for partition under decree—Decree for partition—A consent decree for partition made between three parties contained a provision that, if the plaintiffs should not have the property partitioned within two months from the date thereof, any one of the other

LIMITATION ACT, 1877—continued.**6. ORDER FOR PAYMENT AT SPECIFIED DATE—concluded.**

Construction of decree.—Where a decree for money is made payable by instalments with a proviso to the effect that on default being made in payment of the instalments, the decree-holder is entitled to execute the decree for the whole amount due, such a decree is to be construed as much as possible in favour of the decree-holder, and unless the decree clearly leaves the decree-holder no option on the happening of a default but to execute the decree once and for all for the whole amount due under it, the decree-holder may execute it on the happening of the first, second, or any subsequent default, and limitation will run against him in respect of each instalment separately from the time when such instalment may become due. **SHANKAR PRASAD v. JALPA PRASAD**

[I. L. R., 16 All., 371]

358. ————— *Decree payable by instalments—Waiver of default in payment—Civil Procedure Code (1882), s. 258.*—Where a decree was payable by instalments, and in default it was provided that the whole amount should become due,—*Held* that proof of a part-payment towards an instalment due accepted by the decree-holder (even though it was a payment not certified to the Court under s. 258 of the Civil Procedure Code) would be material as evidence of waiver, and that, if there were such waiver, limitation would not run till the next default. **RAJESWARA RAU v. HARI BABANDHU**

[I. L. R., 19 Mad., 162]

359. ————— *Transfer of Property Act (IV of 1882), s. 90—Application for decree against non-hypothecated property—Starting point of limitation.*—Where in a usufructuary mortgage it was covenanted that if the mortgagee was not given possession he should have a right to obtain the sale of the mortgage property, the mortgage-debt meanwhile being payable on a certain specified date, it was *held* that in respect of an application under s. 90 of Act IV of 1882, the mortgaged property having been sold under the above-mentioned covenant and having proved insufficient to satisfy the debt, limitation began to run from the breach of the covenant to pay on due date, and not from the breach of the covenant to put the mortgagee in possession. **SHEO CHARAN SINGH v. LALJI MAL**

I. L. R., 18 All., 371

7. JOINT DECREES.**(a) JOINT DECREE-HOLDERS.**

The following are the cases decided as to the proceedings in joint decrees under the Acts of 1859 and 1871:—

360. ————— *expl. I—Application by one of several decree-holders.*—Every application made by one or more out of several decree-holders is an application made in the interests of all, and every proceeding taken by one is a proceeding taken for the benefit of all to enforce the judgment, or to keep it

LIMITATION ACT, 1877—continued.**7. JOINT DECREES—continued.**

in force. **ROY PREEONATH CHOWDHRY v. PRAN NATH ROY CHOWDHRY**

8 W. R., 100

DHANESSURIE v. GOODHUE SAHOY

[11 W. R., 421]

BHOOBUNESSURIE DEBIA v. CHUNDER MONER DEBIA

21 W. R., 243

HURUCK ROY v. ZUHOOREE MULL

[22 W. R., 468]

OUDD BEHARI LAL v. BRAJAMOHAN LAL

[4 B. L. R., Ap., 41: 13 W. R., 128]

JOHIROONISSA KHATOON v. AMEERONISSA KHATOON

6 W. R., Mis., 59

INDURJEET KOONWAR v. MAZAM ALI KHAN

[6 W. R., Mis., 76]

361. ————— *Arrangement by decree-holders amongst themselves.*—In the case of a joint-decree, any arrangement made by the decree-holders amongst themselves as to their relative shares in the amount of the decree would not alter its character, and *boni fide* proceedings taken by one of the number to execute the decree would keep alive the rights of all the decree-holders. **INDURJEET KUNWAR v. MAZAM ALI KHAN**

6 W. R., Mis., 76

BEIJO COOMAR MULLICK v. RAM BUKSH CHATTERJI

1 W. R., Mis., 1

362. ————— *Application after death of some of decree-holders—Civil Procedure Code, 1859, s. 207.*—A joint decree for damages was obtained by several plaintiffs in the Court of the Principal Sudder Ameen of Patna in 1854, and was kept alive by endeavours to execute it till 1861. On the 15th June 1861 the Court passed an order modifying the costs of the original decree, but this order was reversed on appeal on the 19th August 1862. Some of the plaintiffs having died in the meantime, an application was made on the 29th July 1863, and an order was passed thereon on the 26th May 1864, whereby the present decree-holders were substituted for the deceased plaintiffs. A new Principal Sudder Ameen was appointed on the 10th December 1864, and he reversed that order, and required from the present decree-holders a certificate of heirship, which they obtained on the 16th September 1865. On the 20th of the same month an order for execution was made by the Principal Sudder Ameen, but it was reversed by the Judge on appeal, on the ground that the order of the 26th May 1864 was not a proceeding within the meaning of s. 20 of Act XIV of 1859; and therefore the application for execution was too late. *Held* that execution might have been obtained under s. 207 of Act VIII of 1859 by the survivors of the original decree-holders for the benefit of all parties interested in it. The order of the lower Appellate Court was reversed. **TEJA SINGH v. RAJNARAYAN SINGH**

1 B. L. R., A. C., 62

S. C. TEJA SINGH v. POKHUN SINGH

[10 W. R., 95]

LIMITATION ACT, 1877—continued.

7. JOINT DECREES—continued.

execution against the different defendants as if there were separate decrees. STEPHENSON v. UNNODA DOSSEE 6 W. R., 18

379. ———— Death of judgment-debtor—Execution—Execution against one of several representatives of a sole debtor—Death of

Senak Singh v. Hingu Lal, I. L. R., 3 All., 157.
KRISHNAJI JANARDAN v. MURARRAY

[I. L. R., 12 Bom., 48

380. ————
cution of
deceased
cation of
representa
takes effect, for the purposes of limitation, against them all. RAMANUJ SWAK SINGH v. HINGU LAL
[I. L. R., 3 All., 157

381. ———— Decree against two persons specifying period for which each was liable —Execution against one—Where a decree was given for arrears of rent against two persons, and one of them was afterwards declared on appeal to be liable for the rents for a certain period only, and execution was taken out against him only,—Held that the decree must be taken as a separate decree against each defendant for the portion for which each was declared to be liable, and consequently that execution proceedings against one would not prevent the law of limitation applying to bar execution against the other. WISE v. RAJVARAIN CHURUBUTTY

[I. B. L. R., F. B., 258: 10 W. R., 30

KHEMA DEBEA v. KAMOLAKANT BUKSHI

[10 B. L. R., 259 note: 10 W. R., 10

a surety-bond by which he agreed, on failure of the debtors to pay the debt, or any one of the instalments, to be liable for the debt, or to have execution

LIMITATION ACT, 1877—continued.

7. JOINT DECREES—continued.

have been taken against him from the date when his liability commenced, and that the decree should have been kept alive as against him by proceedings irrespective of those taken against the judgment-debtors. HURKOO SINGH v. RAN KISHEN

[8 W. R., 44

383. ———— Application for execution against a surety when a step in aid of

pay interest or costs, and the High Court held that, as surety, he was liable only for the principal sum, but not to interest or costs. Subsequently, viz. on the 10th February 1897, K applied for execution against the principal debtor P of the order of the 25th September 1893, in respect of the interest and costs, contending that his application of the 17th February 1894 against the surety was a step in aid of the execution of the order under art 179 of the Limitation Act (XV of 1877) and prevented limitation. Held that his application was barred by limitation. The application for execution against the surety would not operate to keep alive the order as against the principal debtor unless it was made to enforce a liability which was common to both under the order. But under the order the surety was not liable for interest or costs. His liability was expressly confined by his bond to the principal sum, and it was only as to that sum that he was jointly liable with Vinayak. The previous application, therefore, for execution against the surety for money for which he was not liable under the order could not be regarded as a step in aid of execution against the principal debtor P. The mode of enforcing payment against a surety is by summary process in execution, and not by separate suit. KUSAJI RAMJI v. VINAYAK RAMCHANDRA PANGHU

[I. L. R., 23 Bom., 478

384. ———— Application for execution of decree against some of the joint judgment-debtors, out of time—Realization of a portion of

red by limitation, and that therefore it was not in

LIMITATION ACT, 1877—continued.**7. JOINT DECREES—continued.**

parties to the suit might obtain partition by executing the decree. One of the parties sued out execution and obtained partition and possession of his own share. More than three years after the date of the decree, but less than three years from the date of the application just mentioned, another of the parties applied for partition under the decree. *Held* that the application was not barred by limitation under the provisions of the Limitation Act XV of 1877, sch. II, art. 179, expl. 1. **MOHEN CHUNDER KERMOKAR v. MOHESH CHUNDER KERMOKAR**

[I. L. R., 9 Cal., 568]

372. — *Decree for partition, Application for execution of—Co-sharers.*—A, on the 29th June 1871, obtained a decree for partition against B, his co-shareholder, and on the 28th November 1876 applied to have the execution-proceedings struck off the file. The application was refused, and the partition was ordered to be completed at B's expense. *Held* that, as the execution-proceedings taken either by one shareholder or the other were taken on behalf of both, limitation did not apply. **KHOASHED HOSSEN v. NURBE FATIMA**

[I. L. R., 3 Cal., 551; 2 C. L. R., 187]

373. — *Application for execution of decree—Power of mooktear to make application—Civil Procedure Code, 1859, s. 207—Waiver of irregularity by Court.*—An application for execution of a decree on behalf of all the judgment-creditors was presented in Court by a mooktear. The mooktear had himself appended to such application the names of all of them but one who had signed his own name. *Held*, reversing the decision of the Court below, that although execution might fairly have been taken to the form of the application at the time it was presented, yet, having once been accepted by the Court, it was substantially an application on behalf of all the judgment-creditors sufficient to prevent the operation of the Law of Limitation. **ATREO MISREE v. BIDHOO MOOKHEE DABEE**

I. L. R., 4 Cal., 605

374. — and ss. 7, 8—*Civil Procedure Code, 1859, ss. 231, 258—Disability of—Minority—Execution of decree.*—A member of an undivided Hindu family and his two minor brothers (who sued by him as their next friend) brought a suit for partition of family property against their father, and joined as defendants certain persons who were in possession of part of the property under alienations made by the father, but alleged in the plaint to be invalid as against the family. In 1875 a decree was passed in favour of the plaintiffs in the above suit. No application for the execution of the decree was made by either the first or second plaintiff; but the third plaintiff, having attained his majority in June 1881, applied for execution in April 1884: his application was opposed by two of the defendants. The District Judge made an order granting his application in respect of the one quarter share to which he was declared to be entitled under the decree. *Held* that the order of the District Judge was wrong. The decree was not one "passed severally

LIMITATION ACT, 1877—continued.**7. JOINT DECREES—continued.**

in favour of more portions of the subject-matter as payable or attributable to each"; and as neither s. 7 nor s. 8 of the Limitation Act was applicable to the case, the application was barred by limitation under art. 179 of the Limitation Act. **SESHAN v. RAJAGOPALA. RAJAGOPALA v. SESHAN**

I. L. R., 13 Mad., 236

375. — *Civil Procedure Code, ss. 231, 232—Assignment of decree by operation of law—Application for execution of decree.*—A Hindu obtained in 1878 a decree for partition of certain property and applied in 1888 to have it executed. It appeared that the decree-holder's son, having obtained against him in 1881 a decree for a share of whatever he should acquire under the decree of 1878, had applied for execution of the last-mentioned decree; and reliance was now placed on that application to save the bar of limitation. *Held* that, assuming the decree of 1881 had effected an assignment by operation of law of the decree of 1878, the father and son were not joint decree-holders within the meaning of Civil Procedure Code, s. 231, and the father's application for execution was barred by limitation. **RAMASAMI v. ANDA PILLAI**

I. L. R., 13 Mad., 347

This decision was set aside on review, and it was held on the facts as then presented to the Court that the decree was not a joint decree, and that no question therefore arose as to the effect of expl. I to art. 179 of the Limitation Act. **RAMASAMI v. ANDA PILLAI**

[I. L. R., 14 Mad., 252]

(6) JOINT JUDGMENT-DEBTORS.

376. — *Decree declaring separate liability—Proceeding to keep decree alive.*—Where a decree was passed against several defendants, each of whom is declared to have a separate liability in respect of a definite amount, execution against one or more of such judgment-debtors keeps the decree in force against all simultaneously. **MOHESH CHUNDER CHOWDHRY v. MOHEN LALL SIRCAR**

S W. R., 80

377. — *Proceeding against some only of judgment-debtors.*—A proceeding against certain of a number of joint judgment-debtors, in which, in the presence of certain of them, some are released from execution and some declared liable, is a proceeding within the meaning of s. 20, Act XIV of 1859. **MOHESH CHUNDER BISWAS v. TARAMONER DASSEE**

9 W. R., 240

378. — *Proceedings against some only of judgment-debtors.*—The law makes no distinction between the different defendants liable under a decree; the decree is kept wholly in force if any effectual proceeding is taken under it within the prescribed time to keep it alive. But where a decree, though nominally in one document, really contains separate decrees against separate individuals, the law of limitation may be put into force in

LIMITATION ACT, 1877—continued.

a decree on appeal from a mofussil Court, the Court which has to execute the decree of the High Court is governed by the rules which govern the execution of its own decrees. The ruling in *Chowdhry Wahid*

by execution, is not dissented from, except that it was

[17 W. R., 292 14 Moore's L. A., 485

S. C. in lower Court, *LISHEN KINER GHOSH v. BURUDA KANT BOY* S W R., 470

JOY NARAIN GIBEE v. GOLUCK CHUNDER MYTEL
[22 W. R., 102

10. ————— Execution of an order

application to enforce it is, in point of law, an

BHOORONA ALUMBARI KOER v. JOBRAS SINGH
[11 C. L. R., 277

execution was made in September 1869 under s 216 of the Civil Procedure Code (Act VIII of 1859) and after notice to the defendant as provided thereby, an order was made under that section for execution

under the Code made after notice to show cause has on the Original Side of the Court, the same effect as an award of execution in pursuance of a writ of *scire facias* had under the procedure of the Supreme Court—i.e., it creates a revival of the decree. *ASHOOTOSH DUTT v. DOORGA CHURN CHATTERJEE*
[1 L. R., 8 Calc., 504 S. C. L. R., 23

12. ————— Application for execution of decrees—Decree of High Court—Civil Procedure Code (Act X of 1877), s 230—The plaintiffs obtained a decree of the High Court of Bombay

LIMITATION ACT, 1877—continued.

against the defendant on 22nd February 1867. The defendant after the passing of the decree against him, resided in Ahmedabad. In July plaintiff assigned his decree to L, who in 1876 assigned it to M. From time to time M obtained orders for the execution of the said decree but was always unable to proceed to execute on. The last order for execution made by the High Court was on the 4th February 1879. In April 1880 the decree was transmitted to the Court at Ahmedabad for execution, and that Court in September 1879 issued a warrant of arrest against the defendant, against the order for which the defendant appealed. The said order was confirmed by the High Court on 10th February 1880. In April 1881 the defendant was in Bombay, and M, the decree holder, obtained a summons calling on defendant to show cause why the decree should not be executed against him. On 3rd May the summons was made absolute. The defendant appealed and contended that the application for execution was barred by limitation under s 230 of the Civil Procedure Code (Act X of 1877) which was to be read with cl 180 of sch II of the Limitation Act, XV of 1877. Held that the application was not barred. Cl 180 of the second schedule of the Limitation Act, XV of 1877, was intended to be independent of s 230 of the Civil Procedure Code, and not to be in any way controlled by it. S 230 does not apply to decrees made by the High Court. *MAYABHAI PRAEMHAI v. TRIDHUVANDAS JAGJIYANDAS*

[L. R., 6 Bom., 258

GANAPATHI v. BALASUNDARA

[1 L. R., 7 Mad., 540

13. ————— Execution of decrees—Order of Her Majesty in Council—Review—Civil Procedure Code (Act XIV of 1882), s 230 248—*Res judicata*—A decree was obtained against the judgment debtor in the Zillah Court in 1860, which

27th November 1872 and 10th April 1880 various

10th February 1881 and the 19th April 1886 a number of applications were made for execution, which were struck off. Another application was made on the 25th July 1887 for execution. On the 28th October 1887 the judgment debtor filed an objection on the ground that the decree was barred. On the 20th December 1887 the objec-

LIMITATION ACT, 1877—continued.**7. JOINT DECREES—concluded.**

accordance with law. A decree was obtained against four persons on the 13th August 1890. An application for execution was made against all of them on the 7th October 1893. A subsequent application was made against two of them on the 17th February 1897, and a portion of the decretal amount was realized. On a further application who were parties to the p and also against a person who was not a party to the said proceeding, objection was taken by the latter that the application for execution as against him was barred by limitation. *Held* that the application was barred by limitation, inasmuch as the objector was not a party to the previous execution-proceeding, which was itself barred by limitation, and therefore it had not the effect of keeping the decree alive. **HARENDRA LAL ROY CHOWDHRY v. SHAM JAL SEN** [I. L. R., 27 Calc., 210]

8. MEANING OF PROPER COURT.

385. ———— *expl. II (1871, art. 167)—“Court,” Meaning of—Application to execute decree.*—The term “Court” in Act IX of 1871, sch. II, art. 167, means the Court whose business it is, either by transfer or otherwise, to execute the decree. **PHOKASH CHUNDER LAHORY v. POORNO CHUNDER ROY** 21 W. R., 410

386. ———— *“Court”—Conciliator.*—A conciliator appointed under the Dekkan Agriculturists’ Relief Act (XVII of 1879) is not a Court. The presentation therefore to a conciliator of an application for execution of a decree within the period of limitation does not save the limitation, if the application to the proper Court be time-barred: Act XV of 1877, s. 14, para. 3; sch. II, art. 179. **MANOHAR v. GEBIAPA** I. L. R., 6 Bom., 31.

——— art. 180 (1871, art. 169; 1859, s. 19).

1. ———— *Decree of Sudder Court, Calcutta.*—The twelve years’ limitation was held not to apply to a decree of the late Sudder Court, which was not a Court established by Royal Charter. **THAKOOR DOSS GOSSAIN v. KASHEE NATH MUNDER** [12 W. R., 73]

HURO PERSHAD ROY CHOWDHRY v. MANICK LUSHEER 12 W. R., 343

2. ———— *Judgment of Judges of Supreme Court sitting as Small Cause Court Judges.*—The judgments of the Judges of the late Supreme Court sitting under Act IX of 1850 (the Small Causes Courts Act) were held to be judgments of a Court established by Royal Charter, and were therefore not affected by Act XIV of 1859, s. 20, but were governed by s. 19. **COLTROUP v. SMITH** [1 Mad., 204]

3. ———— *Decrees of High Court.*—It was formerly held that the execution of decrees of the High Court was governed as to limitation by s. 19,

LIMITATION ACT, 1877—continued.

and not s. 20 or 22, of Act XIV of 1859. **MAHATAB CHAND v. TARUCKNATH MOOKERJEE**

[6 W. R., Mis., 94]

ISHAN CHUNDER CHOWDHRY v. JUGODISHUREE [8 W. R., 267]

BAPURAY KRISHNA v. MADHAYRAY RAMRAY [5 Bom., A. C., 214]

Later rulings, however, are to the contrary—*see infra*.

4. ———— *Decree of Privy Council.*—S. 19, Act XIV of 1859, applies only to Courts in this country established by Royal Charter, and not to the Privy Council, the execution of whose decrees was subject to the limitation prescribed by s. 20 of that Act. **WISE v. JUGBUNDHOO BABOO** [4 W. R., Mis., 10]

5. ———— *Execution of decree of Privy Council—Court established or not established by Royal Charter—Act XXV of 1852, s. 1.*—*Per PEACOCK, C.J., TREYON and L. S. JACKSON, JJ.*—A decree of Her Majesty in Council is neither a decree of a Court established by Royal Charter within s. 19, nor a decree of a Court not established by Royal Charter within s. 20 of Act XIV of 1859. Therefore that Act does not apply to such decrees. S. 1 of Act XXV of 1852 only prescribes the procedure for executing such decrees, and does not apply any law of limitation to them. **ANANDAMAYI DAS v. PURNO CHANDRA ROY** [B. L. R., Sup. Vol., 508; 6 W. R., Mis., 69]

6. ———— *Alteration of decree on appeal—Decree of lower Court altered by High Court.*—Where a decree of the lower Court is materially altered on appeal by the High Court,—*e.g.*, where the amount of mesne profits allowed by the lower Court is cut down by the High Court,—the decree becomes a decree of the High Court, and the period within which a proceeding must have been taken to enforce the same, so that it may not be barred by the law of limitation, is twelve years under s. 19 of Act XIV of 1859. **CHOWDHRY WAHID ALI v. MULICK INAYET ALI** 6 B. L. R., 52; 14 W. R., 288

7. ———— *Execution of decree of High Court on appeal from mofussil.*—A decree of the High Court on appeal from the mofussil must be executed within three years under s. 20, Act XIV of 1859. Such decree is not a decree of a Court established by Royal Charter within the meaning of s. 19. **RAMCHARAN BYSAK v. LAKHIKANT BANNIK** [7 B. L. R., F. B., 704; 16 W. R., F. B., 1]

See ARUNACHELLA THUDAYAN v. VELUDAYAN [5 Mad., 215]

8. ———— *Execution of decree of High Court on appeal from mofussil—Portion of decree relating to costs.*—The portion of a decree of the High Court on appeal from the mofussil which relates to costs comes within s. 19, Act XIV of 1859. **TAFUZZAL HOSSEIN KHAN v. BAHADUR SINGH** [7 B. L. R., 706 note; 11 W. R., 205]

9. ———— *Embodiment in final decree of portion affirmed.*—Where the High Court passes.

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up under s 86 of the Insolvent Act, although a judgment of the High Court, is not a judgment entered up in the exercise of the ordinary original civil jurisdiction, nor could the right to enforce

to such a judgment. The Insolvent Act did not contemplate its being entered up otherwise than as a judgment of the Supreme Court, and, as such, it ranked as a judgment of a chartered Court in the

was made. That order was not made until April 1886, and therefore the right to execution, which arose on the date of that order, was not barred by art 160 of the Limitation Act (XV of 1877). In *THE MATTER OF CANDAS NABRODAS OFFICIAL ASSIGNEE (TURNER) v PURSHOTAM MUNGALDAS NATHUBHOY* I L R, 11 Bom, 138

Held (on appeal to the Privy Council)—The Limitation Act (XV of 1877) sch II, art 160, applies to a judgment of a Court for the relief of insolvent debtors entered up in the High Court, in accordance with s 86 of the Stat 11 & 12 Vict, c 21. Although a Court held under the latter

tion which the High Court may assume, at its
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discretion, upon special occasions and by special

article applicable. In *THE MATTER OF CANDAS NABRODAS NAVIHARU v TURNER*

[I L R, 13 Bom, 520
I L R, 13 I A, 156]

LIQUIDATED DAMAGES

See CASES UNDER DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—BREACH OF CONTRACT

See CASES UNDER INTEREST—SCUTLATIONS AMOUNTING OR NOT TO PENALTIES OR OTHERWISE

LIQUIDATORS.

See CASES UNDER COMPANY—WINDING UP—DUTIES AND POWERS OF LIQUIDATORS

See COMPANY—WINDING UP—GENERAL CASES I L R, 15 Mad, 97

Official Liquidator, Assignment of lease by—

See LANDLORD AND TENANT—LIABILITY FOR RENT I L R, 14 All, 176

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See COMPANY—ARTICLES OF ASSOCIATION AND LIABILITY OF SHAREHOLDERS [I L R, 17 Bom, 469, 473]

See PLAINT—FORM AND CONTENTS OF PLAINT—PLAINTIFFS [I L R, 17 All, 392
I L R, 18 All, 183]

LIS PENDENS.

See FOREIGN COURT, JUDGMENT OF [I L R, 19 Mad, 257]

See MAHOMEDAN LAW—DEETS [I L R, 4 Calc, 403]

See PARTIES—PARTIES TO SUITS—PURCHASERS 7 W. R, 235
[11 Bom, 64]

1. Application of doctrine in India.—The doctrine of *lis pendens* is applicable to natives of this country, and has a wider operation here than in England. The distinction between an equitable lien created *pendente lite* and an absolute sale is that in the latter case, though not in the

LIMITATION ACT, 1877—continued.

decree of which execution was sought was barred by the law of limitation. *Held* that the decree which was sought to be enforced was an "Order of Her Majesty in Council" within the meaning of art. 180 of the Limitation Act. *Luchmun Persad Singh v. Kishun Persad Sing, I. L. R., 8 Calc., 218; 10 C. L. R., 125, and Pitts v. La Fontaine, L. R., 6 App. Cas., 452, approved.* Art. 180 is independent of s. 230 of the Code of Civil Procedure. S. 230 has no application to decrees made by the High Court in the exercise of its original civil jurisdiction. In art. 180, Orders in Council stand in the same category as decrees of Courts established by Royal Charter in the exercise of such jurisdiction. Execution of the decree therefore was not barred by s. 230 of the Code. *Mayadhai Premkhai v. Tribhuvandas Jagjivanlal, I. L. R., 6 Bom., 258, and Ganpathi v. Balsundari, I. L. R., 7 Mad., 516, referred to.* In art. 180 of the Limitation Act the term "revived" must be read in one and the same sense in connection with the High Court decrees and Orders in Council, and not distributively. Following the interpretation of reviver in *Ashootosh Dutt v. Doorga Charan Chatterjee, I. L. R., 6 Calc., 504; 8 C. L. R., 23*, there having been in the present case an order for execution of the decree made after notice to the judgment-debtor, there was such a reviver as prevented the execution of the decree from being barred by art. 180. *Held* also that the objection of the judgment-debtor was *res judicata*. The same contention was raised in the former application and overruled by the judgment of the Subordinate Judge, dated the 20th December 1887. **PURTEH NARAIN CHOWDHURY v. CHUNDRABATI CHOWDHURAI**

[I. L. R., 20 Calc., 551]

14. ——— Application for execution of decree—Transfer of decree for execution—Revivor—Civil Procedure Code (1882), ss. 223, 230, and 248—Insolvent, Adverse possession of—Attachment.—A obtained a decree against B on the original side of the High Court on the 19th December 1881. On the 11th December 1893 the judgment-creditor applied to the Court under s. 223 of the Code of Civil Procedure for "transmission of a certified copy of the decree to the District Judge's Court of the 24 Pergunnahs, with a certificate that no portion of the decree has been satisfied by execution within the jurisdiction" of the High Court, and alleging that the judgment-debtor had no property within its jurisdiction, but had property in the 24-Pergunnahs. The application was headed as an application for execution, and was in a tabular form. Upon this a notice was issued under s. 248 (a) of the Code, and the judgment-debtor not having shown any cause on the 19th December 1893, a certified copy was ordered to be issued. The certified copy of the decree having been transmitted, the judgment-creditor, on the 1st March 1894, applied for the execution of the decree to the District Judge. On the objection of the judgment-debtor that the execution was barred by limitation,—*Held* (NORRIS and GORDON, JJ.) that the application of the 11th December 1893 was not an application for execution, and also that the order of the 19th December 1893 was not an order for execution, and could not operate

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as a revivor of the decree within meaning of art. 180, sch. II of the Limitation Act. There was no necessity for the issue of a notice under s. 248 upon the application to transfer the decree under s. 223 of the Code, and on that application execution could not have been obtained upon the order of the 19th December 1893. The first application for execution was that made on the 1st March 1894 to the Court to which the certified copy of the decree was transmitted, and that was not within time. The execution of the decree was therefore barred by limitation. *Nilmoney Singh Deo v. Bireswar Banerjee, I. L. R., 16 Calc., 744, followed.* *Ashootosh Dutt v. Doorga Charan Chatterjee, I. L. R., 6 Calc., 504, distinguished.* **SUJA HOSSEIN alias REHAMUT DOWLAH v. MONOHUR DAS**

[I. L. R., 22 Calc., 921]

A review having been granted of this decision, the appeal was re-heard, and on the objections of the judgment-debtor that the execution was barred by limitation, and that he having been declared an insolvent, and the properties having vested in the Official Assignee, the attachment was contrary to law,—*Held* (O'KENEALY and HILL, JJ.) that the execution was not barred by limitation, as the order of the 19th December 1893 was an order for execution, and operated as a revivor of the decree within the meaning of art. 180, sch. II of the Limitation Act. *Held* also that, the judgment-debtor having been in possession of the property for more than twelve years, the Official Assignee not having taken possession of it, he had a title by adverse possession which was capable of being attached. *Ashootosh Dutt v. Durga Charan Chatterjee, I. L. R., 6 Calc., 504; Fulleh Narain Chowdhry v. Chandrabati Chowdhrai, I. L. R., 30 Calc., 551, followed.* **SUJA HOSSEIN alias REHAMUT DOWLAH v. MONOHUR DAS**

I. L. R., 24 Calc., 244

15. ——— Judgment entered up under s. 86 of the Indian Insolvent Act (Stat. 11 & 12 Vict., c. 21), s. 86—Execution of such judgment.—C was adjudicated an insolvent in October 1866, and on the 19th August 1868 judgment was entered up against him under s. 86 of the Indian Insolvent Act (Stat. 11 & 12 Vict., c. 21) for Rs. 10,618. In 1886 it was ascertained by the Official Assignee that certain property belonging to the insolvent's estate was available for the creditors of the estate, and on his application an order for execution against the said property was made on the 5th April 1886 by the Insolvent Court under s. 86 of the Insolvent Act. It was contended that execution was barred by limitation. *Held* that execution on the judgment was not barred. *Per SARGENT, C.J.*—The policy of the Indian Insolvent Act is that the future property of the insolvent should be liable for his debts. That intention would be to a great extent defeated if judgment entered up by the order of the Insolvent Court under s. 86, which is the machinery provided for effecting that object, could only be executed within a limited time. Limitation Acts should not be deemed applicable to judgments entered up under s. 86, unless their language clearly requires it. A judgment entered

LIS PENDENS—continued.

NARAYAN v. KRISHNAJI LAKSHMAN 11 BOM, 103,

12. ————— *Sale in execution of decree—Purchaser Right of*—The purchase of property in the mofussil at a sale in execution of decree is valid, notwithstanding a decree for sale of the property in a suit for foreclosure pending in the High Court at the time of sale, to which the purchaser was not a party. ANANDAMAYI DASI v. DHARMENDRA CHANDRA MOOKERJEE

[8 B. L. R., 122, 14 Moore's I. A., 181
18 W. R., P. C., 12]

Affirming the decision of the High Court in ANAND MOYEE DASS v. DHARMENDRA CHANDRA MOOKERJEE . . . 1 W. R., 103

13. ————— *Suit for partition—Right of purchaser*—Three brothers L. M. B., P. A. B., and S. A. B. to property in, differ of the two last mortgages but in case of . . .

the property to pay the costs of the parties to the suit, and under this order the property which the plaintiff sought to recover in the present suit was sold.

claim . . .
session KAILAS CHANDRA GHOSH v. FULCHAND JAHORRI . . . 8 B. L. R., 474

14. ————— *Suit for account against executor—Sale by Sheriff in execution of decree—Right of purchaser at Sheriff's sale against purchaser at sale by mortgagee*—In 1855 a decree for an account was passed, in the Supreme Court at Calcutta against A, an executor. A died in 1856, and the suit which was revived against his representatives, came on for consideration on further directions on the 23th of August 1860. It was then found that A's estate was liable for Rs. 132 406-11 8, and his representatives were ordered

LIS PENDENS—continued

f . . . the money into Court. The representatives

to B on the 1st of April 1867 previously to this, the representatives of A had on the 11th of January 1865 mortgaged the same property together with other lands for the purpose of paying the Government revenue of certain taluqs belonging to A, deceased, and the mortgagee having obtained a decree on his mortgage, the property was sold to C in execution of the mortgage decree on the 30th of March 1867. In a suit for possession by C against B the latter pleaded *lis pendens*. Held that the nature of the suit in which the decree of 1865 and the subsequent order of 1866 were passed was not such as to warrant the application of the doctrine of *lis pendens*.
1855

8 B. L.

NILEATTA BOSE

[1 L. R., 8 Cal., 79 9 C. L. R., 173
10 C. L. R., 113]

15. ————— *Purchase pendente lite—Right of purchaser against mortgagee of property*—Plaintiff purchased at a sale by the District Munsif's Court of Guntur held on the 22nd of December 1868 the interest of one F. G. in a cotton screw at Guntur. Previous to this on the

the 18th of February 1870. The present plaintiff objected to the sale and was referred to a regular suit. Accordingly he brought the present suit to set aside the decree in No. 16 of 1867 as regards the share of F. G. in the screw at Guntur to cancel the

LIS PENDENS—continued.

former, it is necessary to institute a fresh suit. **KASIM SHAW v. UNNODAPERSHAD CHATTERJEE**

[1 Hyde, 160

2. — The doctrine of *lis pendens* is in force in British India. **LAKEHMANDAS SARUPCHAND v. DASRAT** I. L. R., 6 Bom., 108

GULABCHAND MANICKCHAND v. DHANDI VALAD BHAV 11 Bom., 64

3. — Principle of doctrine—Registered and unregistered conveyances.—The doctrine of *lis pendens* rests, as stated by Turner, L.J., in *Bellamy v. Sabine*, not upon the principle of constructive notice, but upon the fact that it would be plainly impossible that any action or suit could be brought to a successful termination if alienations *pendente lite* were permitted to prevail. This reason for refusing recognition to alienations *pendente lite* made by a party to a suit is as fully applicable in the case of a registered as of an unregistered conveyance. **LAKEHMANDAS SARUPCHAND v. DASRAT**

[I. L. R., 6 Bom., 168

4. — English law, *Applieability of, in mofussil*—Suit to set aside alienations by widow.—The widow of a legatee of one-half of the residue and the bulk of considerable estate sued to set aside alienations made by the widow of one of three executors acting as managers; her husband, the deceased executor, being legatee of one-sixth. The alienations were made pending a suit by the same plaintiff in the Supreme Court to administer the entire estate, and to expose defalcations and frauds of the managers and executors also, after an injunction issued in that suit prohibiting alienation; and the alienations were set aside by the Court. *Quæra*—Whether the English doctrine of *lis pendens* is applicable in the mofussil. **EX-PARTE NILMADHUB MUNDUL** 2 Ind. Jur., N. S., 169

5. — The doctrine of *lis pendens* applies only to alienations which are inconsistent with the rights which may be established by the decree in the suit. **MUNISAMI v. DAKSHANAMURTHI** I. L. R., 5 Mad., 371

6. — Assignment of mortgages—Suit for possession—N being mortgagee in possession of five-eighths of a pangu (share) of certain land—security for a debt of R100—hypothecated his rights to M in 1876. In 1878 K bought two-eighths of the said five-eighths from the mortgagor. In 1879 K sued N claiming possession of his two-eighths on payment of R400, and obtained a decree and possession thereof. Pending this suit, N assigned his mortgage to M. M was aware of the suit, and K was aware of the assignment when he paid R400 into Court for N. In 1883 K bought the remaining three-eighths from the mortgagor, and sued N and M to recover possession thereof. M pleaded that he had a valid mortgage over three-eighths. *Held* by **MUTTUSAMI AYYAR, J.**, that if the assignment of the mortgage by N to M was a real transaction, this plea was good. *Per* **MUTTUSAMI AYYAR, J.**—The doctrine of *lis pendens* can only be relied on as a protection of

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the plaintiff's right to property actually sought to be recovered in the suit. **BRAHANNAYAKI v. KRISHNA**

[I. L. R., 9 Mad., 92

7. — The effect of a *lis pendens* in India considered. **KRISHNAPPA VALAD MAHADAPPA v. BAHIRU YADAVRAY**

[8 Bom., A. C., 55

SAM v. APPUNDI IBRAHIM SAIB 6 Mad., 75

8. — Possession of property obtained pending suit.—Possession of property obtained from a defendant while a suit is pending against him in respect of that property must be taken to be the possession of the defendant himself for the purposes of the suit. **RAM KISHEN v. DOOLEE CHAND** 22 W. R., 547

9. — *Maxim, "Pendente lite nihil innovetur."*—The rule "*Pendente lite nihil innovetur*" is in force in British India. Where the owner of a house, during the pendency of a suit by an unregistered mortgagee for foreclosure and sale, mortgaged the same house by a registered mortgage to another person, it was held that the last-mentioned mortgagee had no title as against the purchaser under a decree for sale in the suit, although such purchaser was the plaintiff in the suit. A grantee or vendee of the defendant, becoming such during the pendency of the suit, need not be made a party to the suit; and, inasmuch as the above-mentioned rule does not rest upon the equitable doctrine as to notice, it is a matter of indifference whether or not, at the time of his becoming grantee or vendee, he had actual notice of the existence of the suit. **GULABCHAND MANICKCHAND v. DHONDI VALAD BHAV** 11 Bom., 64

10. — Possession under a subsequent mortgage created during the pendency of a suit by a prior mortgagee.—A sale or mortgage *pendente lite* is invalid as against the plaintiff, and the vendor or mortgagor is under a disability to give any valid possession, as against the plaintiff in the pending suit, to the party who becomes a purchaser or mortgagee during the pendency of the suit, whether or not the purchaser or mortgagee *pendente lite* has knowledge of the prior sale or mortgage as to which the litigation is pending, or of the litigation itself. **Kasim Shaw v. Unnodapershad Chatterjee**, 1 Hyde, 160, and **Annual Appeal v. Sanagapalli Latchmidevamma**, 7 Mad., 101, followed. **BAZAJI GANESH v. KUNUSALI**

[11 Bom., 24

11. — Sale *pendente lite*—Right of purchaser—Mortgage.—On the 31st August 1863 A mortgaged his house to B, who brought a foreclosure suit, and on 7th July 1866 obtained a decree against A for the sale of the house if the mortgage-debt was not paid on or before the 24th March 1868. The debt not having been paid, the house was sold at a Court sale on the 15th July 1870 and purchased by C. In an action brought by the plaintiff to recover possession of the house, on the ground that he had purchased it on the 2nd August 1868, at an execution sale under a common money-decree against A,—*Held* that, even if there had been

LIS PENDENS—continued.

right to such money in virtue of his auction-purchase. It appeared that the Court which passed the decree in favour of *H* and *M* did so without jurisdiction. Held that, inasmuch as the suit in which such decree was made was tried and determined by a Court having no jurisdiction, it could not be held that *A* was bound by such decree, and that it could not be said that *A* was bound to take steps to get such decree set aside by means of appeal, or that, because he had omitted to do so, it had become binding on him and his suit was precluded. *Quære*—Whether the doctrine of *lis pendens* applies in the case of a purchase in execution of decree. **ALI SHAH v. HUSAIN BAKSH** I. L. R., 1 All, 588

It was held it does not. **NUFFUR MEBDHA v. RAM LALL ADHICARY** 15 W. R., 308

22 *Sale in execution of decree—Purchaser, Rights of—Decree by mortgagee—Incumbrance.*—Where a creditor obtains a decree against his debtor, and in execution puts up

gage-bond (although such suit has not proceeded to a decree), such judgment-creditor purchasing *pendente lite* only obtains the right and interest of the mortgagor in such property—*viz*, the equity of redemption—and does not acquire the property free from the incumbrance created by the debtor. **LALL KALI PROSAD v. BULI SINGH**

I. L. R., 4 Calc, 780; 3 C. L. R., 398

ing creditor in a suit against successful intervenors or claimants.—In 1872 the plaintiff obtained a money decree against two brothers, *P* and *K*. In execution of that decree, he attached their one-half share in certain fields in 1874. The attachment was removed at the instance of two claimants, *S* and *B*. In 1875 the plaintiff sued the claimants, and obtained a decree in his favour in 1878. Meanwhile in December 1874, after the plaintiff's attachment had

of 1875, was not bound by the decree made in that suit—first because, as an auction-purchaser at a

LIS PENDENS—continued.

Court sale in execution of a decree, he derived title, not from *P*, but by operation of law, secondly because *P* was not the person against whom the decree was made in the suit of 1875, and, thirdly, because *P* was not represented in that suit by the plaintiff simply because the plaintiff sought to establish his right to attach and sell the property as *P*'s property. **ALI SHAH v. HUSAIN BAKSH**, I. L. R., 1 All, 588, followed. **LALU MULJI THAKAR v. KASHIBAI** I. L. R., 10 Bom, 400

24 *Presentation in Court of award—Assignment pending such proceedings*—*P* and his partners mortgaged certain immovable property to plaintiff on the 11th October 1869. They had then no title to the property, but they subsequently acquired one by purchase on the 29th June 1871. On plaintiff demanding that *P* and his partners should make good the contract of mortgage and of the interest they had acquired, the matter was referred to arbitrators, who on the 26th December 1873, made an award empowering plaintiff to sell the mortgaged property in satisfaction of his debt. The award was presented in Court by plaintiff on the 23rd January 1874, and was filed by the Court on the 23rd February 1874. Meanwhile, on the 14th February 1874, the property was attached in execution of a money-decree obtained by a creditor of *P* and his partners against them. On the 15th April 1874 it was sold by auction and pur-

valent to the presentation of a plaint for the specific performance of the contract of mortgage, and the proceedings consequent thereon constituted a *lis pendens*, during which a mere money-decree-holder could not, by any proceedings which he might take, defeat the object of plaintiff's application to the Court to file his award. **PRANJIVAN GOVARDHAN-DAS v. RAJU** I. L. R., 4 Bom, 34

25 *Mortgage by executors—Suit on mortgage—Administration suit—Writ of *fi-fa*—Sheriff's sale—Sale in execution of decree*. In a suit by the representatives of *P* *D* against his brother *A* *D*, and after *A* *D*'s death against his executors, it was found that there was over Rs. 32,400 due to the plaintiff from the estate of the deceased, and on the 29th of August 1866 the executors were ordered to pay this sum into Court. The executors disobeyed, and on the 24th of December 1868 a writ of *fi-fa* was issued from the High Court, in execution of which certain property belonging to the estate of *A* *D* was sold to the defendants on the 18th of July 1867. Previously, however, on the 12th of October 1866, the executors had mortgaged the same property to the plaintiff, who brought a suit on his mortgage on the 10th of June 1867. On the 25th of August 1867 the present defendants were made parties to that suit, and in their written statement they alleged that they had been improperly made parties, and claimed a title superior to that

LIS PENDENS—continued.

had not notice. The Court also found that plaintiff had notice. Upon appeal.—*Held* that, as the purchase made by the plaintiff was made while the suit No. 16 of 1867 was pending, in which a mortgage was alleged and payment was prayed out of the property, the plaintiff was bound by the decree made therein, whether he had or had not notice, nor could he in any way question that decree. **MANUAL FRUVAL v. SANAGAPALLE LATCHMIDEVAMMA**

[7 Mad., 104]

16. — — — — — Notice—Right

of purchaser pendente lite as against person whose lien has been declared in suit to which the purchaser was no party—*Notice*.—Suit to recover possession of a mutah from which plaintiff had been ejected by an order of Court, passed in execution of the decree in a suit to which he was no party. Plaintiff claimed under a deed of sale from A (a purchaser from C and D), dated 11th November 1860, and alleged that he purchased for valuable consideration and without notice of any other claim. Defendant asserted that plaintiff purchased fraudulently with notice of her late husband's right of purchase. It appeared that defendant's husband had sued C and D others to enforce a lien upon the mutah, and obtained a judgment of the Privy Council upholding his lien and declaring its priority over the purchase of C and D. This suit was pending before the Privy Council at date of plaintiff's purchase. In 1862 defendant's husband sued C and D for specific performance of an alleged agreement for sale, dated October 1851, without adducing any evidence as to the existence of the agreement, and got a decree in his favour, because the Principal Sudder Ameen had said in the original case that C and D had agreed to sell the mutah. The present plaintiff was turned out of possession under this decree, to the proceedings in which he had in vain sought to get made a party, on the ground that he was affected by notice of the former proceedings. He sought relief under s. 250, Act VIII of 1859, but his application was dismissed, and he then commenced this suit. The Civil Judge decided in favour of plaintiff. *Held*, confirming the decree of the lower Court, that this was a case of a vendee of property, perhaps subject to a lien, turned out upon a decree against other people declaring the holder of the lien the owner of the property, and that the ejection was wrongful and procured by a gross misuse of the Court's process. The effect of notice of *lis pendens* considered. **SAM v. APPUNDI IBRAHIM SAIB** . . . 6 Mad., 75

17. — — — — — Purchase pen-

dente lite—Right of suit.—P, having obtained a decree against the heirs of H, attached certain property in execution. P, one of the heirs, objected that the decree was made against the defendants in their representative capacity, and that the property attached had descended to her, not from H, but from her husband. The objection was overruled and the property sold. P appealed to the High Court, which passed a judgment in her favour. *Held* that the sale of the property was one *pendente lite*, and, as such, subject to the final result of the suit between the parties; and that P had a right to come into

LIS PENDENS—continued.

Court as against the purchaser and establish her title to the property. **INDERJEET KOOR v. POOTER BEGUM** . . . 19 W. R., 197

18. — — — — — Purchaser under

execution sale.—In a suit for rent by the auction-purchaser of property which had been sold in execution of a money-decree, the defendant admitted being in possession, but denied the alleged relationship of landlord and tenant, contending that the property had been purchased by himself at a sale in execution of a decree which he had obtained upon a mortgage-bond, i.e., a money-bond with a clause creating a charge upon the property. The suit on this mortgage was commenced after the attachment upon which the property was sold to the plaintiff, but was pending when the plaintiff purchased. *Held* that the mortgagors were bound by the proceedings in the suit including the attachment and sale, and the defendant had a good title against the plaintiff in the same manner as against the mortgagors whose interest the plaintiff purchased, even if the certificate of sale was not registered. A purchaser under an execution is bound by *lis pendens*, for it would be impossible that any action or suit could be brought to a successful termination if alienating *pendente lite* were permitted to prevail. **RAJ KISHEN MOOKERJEE v. RADHA MADHUB HODAR**

[21 W. R., 349]

19. — — — — — Patni lease

granted pendente lite.—A patni lease of lands granted by a Hindu widow in possession upheld, though made pending an equity suit brought by her against her husband's executors. **BISSONATH CHUNDER v. RADHA KRISTO MUNDUL** . . . 11 W. R., 554

20. — — — — — Purchase of prop-

erty on which there is a decree in suit on a mortgage-bond.—Suit for possession against purchaser from mortgagor.—The plaintiff in 1877 obtained a decree on a mortgage-bond, in execution of which property belonging to his debtor was put up for sale and purchased by the plaintiff on 5th May 1878. The defendants had, in execution of a subsequent money-decree against the same debtor, purchased the same property on the 1st April 1878. In a suit by the plaintiff for possession and mesne profits,—*Held*, following the case of **Raj Kishen Mookerjee v. Radha Madhub Holdar**, 21 W. R., 349, that the defendants were purchasers *pendente lite*, and were consequently bound by the proceedings in the plaintiff's suit on the mortgage-bond. **JHAROO v. RAJ CHUNDER DASS** . . . I L. R., 12 Cal., 299

21. — — — — — Sale in execution

of decree—Auction-purchaser—Res judicata.—A, the auction-purchaser of certain immoveable property at a sale in execution of a decree, purchased with notice that a suit by H and M against the judgment-debtor and the decree-holder for a share in such property was pending, but did not intervene in such suit. Before the sale to A was made absolute, H and M obtained a decree in the suit for a moiety of the share claimed by them. A took no steps to get such decree set aside, but sued them to establish his

LIS PENDENS—continued.

chaser at the Court's sale in August 1885, took the property subject to the defendant's mortgage of Y's share to the defendant in 1884, but free from the effect of the subsequent sale by Y and X to the defendant (3) As this was a suit for possession, and as Y's share had been mortgaged to the defendant with possession, the plaintiff was only entitled to joint possession of the property with the defendant. He could file a separate suit to redeem defendant SHIVJIRAM SAHEBDRAM MARWADI v. WAMAN NABAYAN JOSHI I. L. R., 22 Bom., 939

33. — Purchase by puisne mortgagees at sale in execution of decree of property with several mortgages on it—Purchases before and during mortgagee's suit and after decree therein law affected by it—The plaintiff in this suit had succeeded to four, out of five, mortgages subsequent to his own, which had been executed before a decree

the suit in which the decree was made Held that a distinction must be made in respect of whether the mortgages thus transferred to the plaintiff had been executed suit. As the plaintiff was entitled purchaser of the decree As regards the mortgages executed after that suit was brought, the plaintiff was bound by the decree, and his interest in the mortgages, transferred *pendente lite*, passed to the purchaser On the other hand, persons who have taken transfers of property subject to a mortgage cannot be bound by proceedings in a subsequent suit between the prior mortgagee and the mortgagor, to which they have not been made parties UMES CRUNDER SIRCAR v. ZABIB FATIMA [I. L. R., 18 Calc., 164 L. R., 17 I. A., 201

34. — Suit resulting in

referred (but whether before or after the mortgage

LIS PENDENS—continued.

to R was not clear) against the order of 28th December 1872, and the appeal was, on 30th May 1874, settled by a compromise between the plaintiffs and A, by which among other conditions time was granted to A to pay off the decree, and a twelve anna share of the properties claimed was released from attachment, the attachment being continued against the other 4 annas share the order of the Court was simply that "the case be struck off" The decree not being satisfied, the plaintiffs took out execution, and the properties were put up for sale and purchased by the plaintiffs on 27th November 1882. Subsequently in execution of the decree R held against A, the properties were again put up for sale and purchased by R on 14th November 1884. In a suit against R and A for declaration of the plaintiff's title and for possession of the properties,—Held that the order of the Court and the compromise in the claim suit were not such proceedings as from nature of the suit and the relief prayed R could have expected would result, and that he was therefore not bound by them as a purchaser *pendente lite* Kailash Chandra Ghose v. Ful Chand Johari, 8 B. L. R., 474, and Kasseemunnissa Bibee v. Nilratna Bose, I. L. R., 8 Calc., 73, referred

questioning that title Poresh Nath Mukherjee v. Anath Nath Deb, I. L. R., 9 Calc., 265, followed. KISHORY MOHUN ROY v. MAHOMED MUJAFFER HOSSEIN I. L. R., 18 Calc., 188

35. — Auction-purchaser bound by *lis pendens*—K brought a suit against P to recover possession of certain land. Whilst that suit was pending in the Court of first instance, the right, title, and interest of P in the land were sold in execution of a decree against him at the instance of a judgment creditor A, purchased by G. Subsequent to G's purchase, A's suit was dismissed by the Court of first instance, but A appealed, and the Appellate Court reversed the decree of the Court below and gave judgment in K's favour. G, who was not made a party to the appeal, thereupon instituted a suit against K to eject him and obtain possession of the land. Held that the doctrine of *lis pendens* applied, and that G was not entitled to maintain the suit. Held further that it made no difference to the application of the doctrine that the decree of the Court of first instance was in favour of G's predecessor in title, for that decree was open to

LIS PENDENS—continued.

of the plaintiff. That suit was dismissed with costs as against the present defendants, on the ground that they were improperly added; but a decree for sale was given against the executors, in execution of which the mortgaged property was sold to the plaintiff. In a subsequent suit brought by the plaintiff for possession. *Held* that the defendants were entitled to redeem, and were not affected by the suit of 1867 as a *lis pendens*. **CHRISPER NATH MILLICK v. NITIKANT BANERJEE**. I. L. R., 8 Cal., 690

29.

Sale in execution of decree—Pror attachment.—On the 29th June 1876 the plaintiff obtained a money-decree by consent against *R*, the father-in-law of the defendant. On the 21st of July 1876 the plaintiff attached a house apparently belonging to *R*. On the 12th Oct. 1876 the defendant sued *R* for maintenance, and alleged that the house in question was the property of her deceased husband and *R*, and she claimed the right to continue to live in it. On the 10th of November 1876, and during the pendency of the defendant's suit against *R*, the house was sold under the plaintiff's decree against *R*, and the plaintiff himself became the purchaser. On the 20th of June 1877 the defendant obtained a decree against *R* in terms of the prayer of her plaint. On the 27th of August 1879 the plaintiff brought the present suit to eject the defendant from the house. *Held* that what the plaintiff bought from *R* was his right, title, and interest in the house, which being subject to the decree in the defendant's pending suit, the plaintiff's purchase was likewise subject to the same, and the circumstance that the plaintiff had placed a prior attachment on the house made no difference. The plaintiff therefore could not eject the defendant during her lifetime. **PALVATI v. KISANSING**. I. L. R., 6 Bom., 567

37.

Sale pending appeal—Decree reversed—Right of judgment-debtor.—*S* having obtained a decree against *M* and another, brought to sale and purchased *M*'s property pending appeal. The decree having been reversed.—*Held* that *M* was entitled to the restoration of his property, and not merely to the proceeds of the sale thereof. **SAPASIVA v. MUTTU SAPAPATHI CHETTI**

(I. L. R., 5 Mad., 108)

See **LARI KOER v. SOHRAE KOER**

(I. L. R., 3 Cal., 724)

28.

Perpetual lease—Cultivation of waste land.—A decree-holder, who has obtained possession of land in suit pending an appeal, cannot grant a perpetual lease thereof which will be binding on his opponent in the event of the decree being reversed. **GAJAPATI RADHIKA PATTI MAHADEVI GURU v. GAJAPATI RADHAMAY MAHADEVI GURU**. I. L. R., 7 Mad., 93

29.

Former decree for partition—No return to commission—Mortgage of share—Purchase by a stranger of portion of the lands included in the decree—Suit by him for partition—Res judicata.—*A* and *B* were the joint owners in equal shares of certain property. In 1860 *B* mortgaged his share to *A* under a mortgage-deed drawn up in the English form. Later on, in 1869,

LIS PENDENS—continued.

A brought a suit against *B* for partition, and in 1870 obtained a decree appointing a commissioner of partition and directing the partition. No return was made to this commission, and no actual partition came to. In 1873 *A* obtained a decree for an account and for payment, or in default for sale of the property. In 1878 *A*'s share was put up for sale and purchased by *C*, and *C* was put into possession. In 1881 *C* brought a suit against *A* for partition. *Held* that the decree obtained by *A* in 1873 put an end to *B*'s right to redeem unless he paid the amount found due against him, and therefore, at the time of the sale to *C*, *B*'s right to redeem had ceased to exist, and the property was no longer subject to partition under the decree of 1870, and therefore the partition asked for under the suit of 1881 could not be granted. **KIRTY CHRISPER MITTER v. ANATH NATH DIX**

(I. L. R., 10 Cal., 97; 13 C. L. R., 249)

30.

Mortgage executed during pendency of maintenance suit in which decree is made charging property mortgaged—Transfer of Property Act (IV of 1882), s. 52.—Where a member of a Hindu family, during the pendency of a suit for maintenance which resulted in a decree charging the house in suit, together with other property with the maintenance claimed, mortgaged the house in suit to the plaintiff.—*Held* that he was entitled so to do, and that the validity of the mortgage was not affected by the decree of his pendens. **MANIKA GRAMANI v. ELLAPPA CHETTI**

(I. L. R., 13 Mad., 271)

31.

Purchaser at sale in execution of decree—Attachment of property sold ante litem.—Where the defendant in an ejectment action had bought the village in question at a sale in execution of a decree obtained by the mortgagee against the mortgagors thereof, it appeared that prior to his purchase the plaintiff's vendor had sued to establish against the parties to that decree his title to the village, and had subsequently obtained a decree in his favour. *Held* that the defendant bought pendente lite, and was bound by the decree so obtained. That result could not be avoided by showing that the mortgagee decree-holder had attached the village prior to the suit by the plaintiff's vendor. **MORI LAL v. KARAN-UL-FIN**

(I. L. R., 24 I. A., 170)

I. L. R., 25 Cal., 179

1 C. W. N., 639

32.

Decree in mortgage—Sale of mortgaged land pending proceedings in execution of decree.—On the 22nd August 1882, *T* and *S* mortgaged certain land to the plaintiff by an unregistered mortgage. On the 17th May 1884, *T* alone mortgaged the same land to the defendant. This mortgage was duly registered. Subsequently to the date of the defendant's mortgage, the plaintiff sued *T* and *S* on his mortgage, and on 26th August 1884 he got a decree for the sale of the mortgaged property. On 1st November 1884 he applied for execution of his decree, and in August 1885 the execution sale took place and the property was sold to one *D*, who was the plaintiff's nominee. Meanwhile,

LIS PENDENS—continued.

of the plaintiff. That suit was dismissed with costs as against the present defendants, on the ground that they were improperly added; but a decree for sale was given against the executors, in execution of which the mortgaged property was sold to the plaintiff. In a subsequent suit brought by the plaintiff for possession,—*Held* that the defendants were entitled to redeem, and were not affected by the suit of 1867 as a *lis pendens*. **CHUNDER NATH MULLICK v. NILAKANT BANERJEE**. I. L. R., 8 Calc., 690

26. ————— *Sale in execution of decree—Prior attachment.*—On the 29th June 1876 the plaintiff obtained a money-decree by consent against R, the father-in-law of the defendant. On the 24th of July 1876 the plaintiff attached a house apparently belonging to R. On the 12th October 1876 the defendant sued R for maintenance, and alleged that the house in question was the property of her deceased husband and R, and she claimed the right to continue to live in it. On the 10th of November 1876, and during the pendency of the defendant's suit against R, the house was sold under the plaintiff's decree against R, and the plaintiff himself became the purchaser. On the 20th of June 1877 the defendant obtained a decree against R in terms of the prayer of her plaint. On the 27th of August 1879 the plaintiff brought the present suit to eject the defendant from the house. *Held* that what the plaintiff bought from R was his right, title, and interest in the house, which being subject to the decree in the defendant's pending suit, the plaintiff's purchase decision but subject to the same, and the decree of the lower court which transferred the seller's title to the property and the decree was subsequently appealed against and reversed by the Appellate Court,—*Held* that the doctrine of *lis pendens* applied, as the plaintiffs purchased during the active prosecution of a suit within the meaning of s. 52 of the Transfer of Property Act, although no appeal was actually pending at the time when the purchase was made. **Kaseemunnissa Bibee v. Nilratna Bose**, I. L. R., 8 Calc., 79, referred to. **Gobind Chandra Roy v. Guru Churn Kurmohar**, I. L. R., 15 Calc., 94, followed. **Indurjeet Koer v. Pootee Begum**, 19 W. R., 197; **Chundee Koomar Lahooree v. Gopee Kristo Goswamee**, 20 W. R., 204; **Kishory Mohun Roy v. Mahomed Mujaffar Hossein**, I. L. R., 18 Calc., 188; and **Moti Lal v. Karrabuddin**, I. L. R., 25 Calc., 179, relied on. *Held* further that the law of *lis pendens* in England is different from that prevailing in this country, which is founded on the fact that it would be impossible to bring any suit to a successful termination if alienations *pendente lite* were permitted to prevail. **DENO NATH GHOSE v. SHAMA BIBEE**. [4 C. W. N., 740

LIS PENDENS—continued.

A brought a suit against B for partition, and in 1870 obtained a decree appointing a commissioner of partition and directing the partition. No return was made to this commission, and no actual partition came to. In 1873 A obtained a decree for an account and for payment, or in default for sale of the property. In 1878 B's share was put up for sale and purchased by C, and C was put into possession. In 1881 C brought a suit against A for partition. *Held* that the decree obtained by A in 1873 put an end to B's right to redeem unless he paid the amount found due against him, and therefore, at the time of the sale to C, B's right to redeem had ceased to exist, and the property was no longer subject to partition under the decree of 1870, and therefore the partition asked for under the suit of 1881 could not be granted. **KIRTY CHUNDER MITTER v. ANATH NATH DRY**

[I. L. R., 10 Calc., 97; 13 C. L. R., 249]

30. ————— *Mortgage executed during pendency of maintenance suit in which decree is made charging property mortgaged—Transfer of Property Act (IV of 1882), s. 52.*—Where a member of a Hindu family, during the pendency of a suit for maintenance which resulted in a decree charging the house in suit, together with other property with the maintenance claimed, mortgaged the house in suit to the plaintiff,—*Held* that he was entitled so to do, and that the validity of the mortgage was not affected by the decree in the maintenance decree declaring that two of these shops were not included in the mortgage. In 1869 the plaintiff's father (the mortgagee) sued A upon the mortgage, and prayed in the same suit that certain other land not included in the mortgage-deed might be held liable for his debts in lieu of the two shops. He obtained a decree on the 25th November 1869, which ordered Rs. 291 to be paid "on the liability of the land in the plaint mentioned." No steps were taken by the plaintiff to execute this decree for seven years. On the 18th August 1876 A sold to the defendant, by a registered deed of sale, a portion of the land so declared liable, and the defendant entered into possession without notice of the plaintiff's decree. The plaintiff now sued to obtain a declaration that the land was liable to be sold in execution of his decree of 1869. Both the lower Courts dismissed his suit. On appeal to the High Court,—*Held* that the defendant was a purchaser for value without notice of the plaintiff's decrees, and took the land unaffected by the plaintiff's equitable lien created by the decree. There was no *lis pendens*. The *litis contestatio* had ceased. The decree, which was a final one, had terminated the litigation between the parties, and now only remained to be executed. There was, moreover, in this case the further circumstance that nothing had been done in the suit after the decree and during the seven years which elapsed between it and the defendant's purchase in 1876. **VENKATESH GOVIND v. MANJULI**. [I. L. R., 12 Bom., 217

38. ————— *Transfer of Property Act (1882), s. 52—Transfer pendente lite—Time at which a suit becomes "contentious."*—*Held* that a suit becomes a "contentious suit" within the meaning of s. 52 of the Transfer of Property Act, 1882, at the time when the summons is served on the defendant. **Radhasyam Mahapatra v. Sibupandu**, I. L. R., 15 Calc., 617, and **Abbey v.**

41. ————— *Transfer of Property Act (IV of 1882), s. 52—When a suit becomes contentious—Priority of registered mortgage.*—As soon as the filing of the plaint is brought

LOCAL INVESTIGATION—continued.

See MAGISTRATE, JURISDICTION OF—
GENERAL JURISDICTION.

[I. L. R., 19 All, 302
3 C. W. N., 607

See CASES UNDER SPECIAL OR SECOND AP-
PEAL—OTHER ERRORS OF LAW OR PRO-
CEDURE—LOCAL INVESTIGATIONS

See TRANSFER OF CRIMINAL CASE—
GROUND FOR TRANSFER.

[I. L. R., 31 Cal., 930
I. L. R., 19 All, 302

nature can only be obtained on the spot BHOWANER
DUTT SINGH v. BEER SINGH 2 N. W., 186

2. ——— Application for inspection
or local investigation—Civil Procedure Code,
1859, s. 150—An application under s. 150, Act VIII
of 1859, should be made at the hearing of the suit,
and not previously MACKINNOY, MACKENZIE & Co
v. BHUGRAM DASS Bourke, O. C., 243

3. ——— Discretion of Court—Local
inquiry.—It is within the discretion of a Judge to
order or refuse a local inquiry. RASH BEHARER
SINGH v. SAHAY ROY 12 W. R., 78

GRAHAM v. LOPEZ 1 W. R., 141

4. ——— Reference to a Commissioner
—Civil Procedure Code, s. 392—The local investi-
gation referred to in Civil Procedure Code s. 392,
presupposes the existence on the record of inde-
pendent evidence which requires to be elucidated, and
that section does not authorize a Court to delegate to
a Commissioner the trial of any material issue which
it is bound to try. SANGHAI v. MOOKAN

[I. L. R., 18 Mad., 350

5. ——— Power of Court to direct,
when parties do not ask for it—Remand order
for local investigation.—In a suit for land, where
the question was as to whether the land lay within
the boundaries of the plaintiffs' or the defendants'

Court thereupon dealt with the case upon the
materials before it and passed a decree. Upon appeal,
the lower Appellate Court remanded the case for the
purpose of a local investigation being held at the cost
of the plaintiff in the first instance. Held that
inasmuch as neither of the parties desired to have a
local investigation, the Court was wrong in remanding
the case, and that it was bound to decide it upon the
evidence before it. JATINGA VALLEY TEA COMPANY
v. CHERA TEA COMPANY I. L. R., 12 Cal., 45

6. ——— Notice of local investigation
—Civil Procedure Code, 1859, s. 150—Though there
was no express direction to that effect in s. 150, Act

LOCAL INVESTIGATION—continued.

VIII of 1859, yet it was necessary to give notice to
parties of the time when a local investigation ordered
by the Court was to be held KISHORCHAND DEBIA v.
ESLINTON 12 W. R., 139

Court to hold a local inquiry RAJ DASS KOONDGO
v. NIL KANTO DHUR 8 W. R., 6

BEJNATH SINGH v. INDURJEET KOER
[8 W. R., 331

BAHADUR ALLY v. DOOMNUN SINGH
[7 W. R., 27

Instances of improper appointments are given in
DOORGA DASS CHATTERJEE v. GOOROO CHURN
MISTREE 6 W. R., Act X, 81
and TEELUCHDHAREE ROY v. MOORALEEDUR ROY
[13 W. R., 285

8. ——— Duty of Judge to conduct
local investigation—Civil Procedure Code,
1859, s. 392—s. 392 Civil Procedure Code, clearly
shows that where a Judge can conveniently conduct
a local investigation in person he should do so.
DWARAKANATH DARDAR v. PRASUNO KUMAR HAJRA
[I. C. W. N., 683

9. ——— Question of disputed bound-
ary.—Possession before date of suit.—Held that
a local inquiry ought not to have been ordered in
this case, where the question to be decided was
one of disputed boundary, which turned chiefly on
possession before the date of suit, and that the
Subordinate Judge would have been justified in dis-
regarding the Ameen's report and trying the appeal
on the recorded evidence KALEE DASS ACHARYA
v. KHETTRO PAL SINGH ROY 17 W. R., 472

See ISWAR CHANDRA DAS v. JUGAL KISHORE
CHUCKERBUTTY 4 B. L. R., Ap, 33
[17 W. R., 473 note

10. ——— Ascertainment of fact of
marriage.—In a case where the issue is whether
two persons bear the relation of man and wife, a
Judge is not justified in going himself to the village
where the parties live, in order to make inquiries
among their neighbours, much less in holding such
local investigation on a Sunday, and without due
notice to one of the parties. JUSODA SARKO v.
JUSODA KOOER 17 W. R., 230

11. ——— Power of Judge to order
local investigation by Subordinate Judge.—
A Judge has no power to order a subordinate Judge,
whose judgment is before him on appeal, to go
and inspect the locality and make a report. Such
a report cannot be treated as evidence one way or
the other. If the Judge was of opinion that it
was necessary to take further evidence, he ought
to have proceeded as directed by ss. 354 and 355,
Act VIII of 1859, and it was competent to him,
if necessary, to order an Ameen or any suitable
person to make a local investigation under s. 150.

LOCAL BOARD.

Notice by President of—

See PENAL CODE, s. 188.

[I. L. R., 20 Mad., 1

LOCAL GOVERNMENT.

Order of, effect of—

See BENCH OF MAGISTRATES.

[I. L. R., 18 Mad., 410

I. L. R., 20 Cal., 870

See JURY—JURY IN SESSIONS CASES.

[I. L. R., 23 Mad., 632

See MAGISTRATE, JURISDICTION OF—
POWER OF MAGISTRATES.

[16 W. R., Cr., 79

See SMALL CAUSE COURT, MOFUSSIL—
JURISDICTION—MUNICIPAL TAX.

[I. L. R., 13 Mad., 78

Power of—

See BOMBAY SURVEY AND SETTLEMENT ACT
(I OF 1865), ss. 31, 49.

[I. L. R., 1 Bom., 352

See GOVERNOR OF BOMBAY IN COUNCIL.

[8 Bom., A. C., 195

I. L. R., 8 Bom., 284

See GOVERNOR OF MADRAS IN COUNCIL.

[2 Mad., 439

See HIGH COURT, JURISDICTION OF—
MADRAS—CRIMINAL

5 Mad., 277

See MAGISTRATE, JURISDICTION OF—
POWERS OF MAGISTRATES.

[16 W. R., Cr., 79

I. L. R., 9 Mad., 431

Rules made by—

See RULES MADE UNDER ACTS.

See PORTS ACTS, s. 6.

[I. L. R., 17 Mad., 118, 397

Suit against—

See NORTH-WESTERN PROVINCES AND
ODDH MUNICIPALITIES ACT, s. 28.

[I. L. R., 1 All., 269

1. ——— Small Cause Court,
Mofussil—Civil Procedure Code, ss. 5, 360, ch.
XX—Insolvency jurisdiction.—Under s. 360 of the
Code of Civil Procedure, the Local Government
cannot invest a Mofussil Small Cause Court with the
insolvency jurisdiction conferred on District Courts
by ch. XX of the said Code, inasmuch as, by reason
of s. 5, ch. XX does not extend to such Courts of
Small Causes. SETHU v. VENKATARAMA

[I. L. R., 9 Mad., 112

2. ——— Notification of
Government of Bombay extending Act, Effect of—
Scheduled Districts Act, XIV of 1874, ss. 5, 6.—
Under s. 5 of the Scheduled Districts Act, XIV of

LOCAL GOVERNMENT—concluded.

1874, the Local Government cannot, by extending an
Act which is of necessarily restricted application,
make its provisions applicable to an entirely new
subject-matter,—*i.e.*, the litigation of a new local
area. Accordingly, where the Government of Bombay
issued the following notification, No. 823 of 1886, —
“In exercise of the powers conferred by s. 5 of the
Scheduled Districts Act, XIV of 1874, the Governor of
Bombay in Council is pleased, with the previous sanc-
tion of the President in Council, to extend to the
Island of Perim the whole of Act II of 1864 of the
Governor General in Council, with the exception of
ss. 2, 17, and 23. The Governor in Council is further
pleased, in exercise of the powers conferred by s. 6 of
the Scheduled Districts Act, XIV of 1874, and by any
other enactment, to direct that the Resident at Aden
shall be Sessions Judge and Court of Session for the
Island of Perim, and shall exercise the same jurisdic-
tion and powers in respect of the administration of
civil and criminal justice in the said island, and in
respect of the trial of persons committed for trial by
the Court of Session for offences committed in the said
island as are vested in him in Aden by the said Act,”
—*Held* that the provisions of the Aden Act II of
1864, which (as appears from the preamble) deals
with the litigation of Aden alone, could not be
extended to Perim, without enlarging the subject-
matter of the Act. *Held* also that the appointment
of the Political Resident at Aden as a Sessions Judge
and Court of Session for the Island of Perim made
under cl. (a) of s. 6 of the Scheduled Districts Act,
XIV of 1874, was valid and effectual with reference
only to the provisions of the Criminal Procedure
Code, and that that portion of the notification which
regulates the exercise by the Resident of his powers
with reference to Act II of 1864 should be treated as
surplusage. QUEEN-EMPRESS v. MANGAL TEK-
CHAND . . . I. L. R., 10 Bom., 274

LOCAL INQUIRY.

See DECREE—CONSTRUCTION OF DECREE
—MESNE PROFITS.

[I. L. R., 8 Cal., 178

/ I. R., 8 I. A., 197

Criminal—

See CASES UNDER POSSESSION, ORDER OF
CRIMINAL COURT AS TO—LOCAL IN-
QUIRY.

LOCAL INVESTIGATION.

See CASES UNDER AMEEN.

See APPEAL—ORDERS . . . 7 W. R., 425
[W. R., 1864, 363.

See APPELLATE COURT—EXERCISE OF
POWERS IN VARIOUS CASES—SPECIAL
CASES . . . 6 B. L. R., 677
[15 W. R., 423
18 W. R., 452

See CHUR LANDS . . . 6 B. L. R., 677
[13 Moore's I. A., 807

LODGING HOUSE KEEPER*See* HOTEL-KEEPER AND GUEST

[3 Bom, O C, 137]

See N W P AND OTHER LODGING HOUSE
ACT

I L R, 20 All. 534

LODGINGS LET TO PROSTITUTE*See* LANDLORD AND TENANT—TENANCY
FOR IMMORAL PURPOSE

[9 B L R, Ap, 37]

LORDS DAY ACT1. ——— Application of—*British Burma*
—Abkar rules—The Lords Day Act (3 Car II
c 7) does not extend to criminal cases in British

[1 B L R, A Cr 17 10 W R 350]

2. ——— *Moulmessy*—The
Lords Day Act does not apply to Moulmessy. *GRASE*
MAN v GARDNER 3 W R, Rec Ref 2

Nor to Madras

See ANONYMOUS CASE

4 Mad. Ap, 62

Lords Day Act does not apply *PARAM SHOOK*
DOSE v BASHEROOD DOWLAH 7 Mad 285

[3 N W 177]

And *see* Cases under HOLIDAY**LOST GRANT, PRESUMPTION OF—***See* PRESCRIPTION—EASEMENTS—GENE
RALLY—CLAIM TO PRESCRIPTION

[15 W R. 212]

1 W R. 230

See PRESCRIPTION—EASEMENTS—LIGHT
AND AIR

3 B L R O C 18

[9 B L R, 85 12 B L R, 408]

LOTTERY*See* COMPANY—FORMATION AND REGIS-
TRATION I L R 20 Mad. 68*Foreign Lottery—Advertisement—*
Newspapers—Publisher—Penal Code (XIV of
1860) s 294A—The expression in any such

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Code *QUEEN EMPRESS v MANCHERJI KAVASJI*
SHAFURJI I L R, 10 Bom, 97**LOTTERY ACT (V OF 1844)***See* PROMISSORY NOTE 9 B L R 441**LOTTERY OFFICE**

—Charge of keeping—

See ACT XXVII of 1870

[9 B L R, Ap, 88]

LOTTERY TICKETS.*See* GAMBLING 12 W R. Cr, 34**LUNACY***See* EVIDENCE—CIVIL CASES—HEARSAY
EVIDENCE 6 B L R. 509
[13 Moore s I A 519]*See* CASES UNDER HINDU LAW—INHERIT-
ANCE—DIVESTING OF EXCLUSION FROM
AND FORFEITURE OF INHERITANCE—IN
SANITY*See* CASES UNDER INSANITY*See* MAHOMEDAN LAW—INHERITANCE
[2 B L R A C, 308]**LUNATIC***See* ARREST—CIVIL ARREST
[1 L R 22 Bom 961]*See* LETTERS PATENT HIGH COURT
NORTH WESTERN PROVINCES CL 12
[1 L R 4 All, 159]*See* PRINCIPAL AND AGENT—AUTHORITY
OF AGENTS I L R. 15 Bom 177*See* REGISTRATION ACT s 35
[1 L R. 1 All. 465
L. R. 4 I A, 188]

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But a Judge from whose decision an appeal is pending is the most unsuitable person to make such investigation. *ROY SOOLTAY BANADPOOR v. LALOO KOORH* . . . 7 W. R., 300

12. ——— **Incomplete inquiry owing to laches of plaintiff.**—In a suit for *waslat*, where the Ameen's inquiry was not completed on account of the laches of the plaintiff, —*Held* (GLOVNA, J., dissenting) that there had been no local investigation at all, and that the defendant had no opportunity of producing his evidence. *KALBE DOSS MITTEN v. DEBNARAIN DEB* . . . 13 W. R., 412

13. ——— **Duty of Ameen to return report to Court ordering investigation.**—An appeal having been made from an order relating to the execution of a decree, the High Court directed that an Ameen should deliver over possession and make a map of the property so delivered over, and a map showing the boundaries laid down in the decree. The Ameen went to the spot and made a map. That map was not transmitted to the Court; but in consequence of certain proceedings in the Subordinate Judge's Court, a second Ameen was sent and a second map made. These proceedings were wholly disregarded by the High Court, which proceeded upon the first Ameen's map and report, against which no exception was filed in the High Court. *LALLJEE SAHOO v. RAJENDR PERTA SAHER* [14 W. R., 418]

14. ——— **Investigation by ameen—Power of District Judge to interfere with order for—Circular Orders 41 of 1866 and 25 of 1870.**—In a suit for the possession of land, the boundaries of which were disputed, the Subordinate Judge ordered an ameen to make a local investigation, and reported his order to the District Judge, who refused to allow the investigation to proceed. *Held* that this was a case coming within the provisions of Circular Order No. 41, dated the 2nd October 1866, which authorizes local investigations by ameens when it is necessary to ascertain by measurement disputed areas of land; and that the District Judge had no authority to stay the investigation. *Per PRINSEP, J.*—All that the District Judge was entitled to do under Circular Order No. 25, dated 25th August 1870, was to express his opinion as to the propriety or otherwise of the Subordinate Judge's order. *NIRON KRISHNO ROY v. WOMANATH MOOKERJEE* [I. L. R., 4 Cal., 718; 3 C. L. R., 234]

15. ——— **Non-attendance at local investigation—Procedure order setting aside a judgment by default.**—Ss. 114 and 180 are to be read together. The words "and persons not attending upon the requisition of the commissioner" in s. 180 are general and apply to parties making default, whether required to give evidence or not. The words "like disadvantages" referred to in s. 180 mean that in the case of the non-attendance of a defendant the local investigation is to be proceeded with *ex parte*; and in the case of the non-attendance of a plaintiff, the suit is to be dismissed with costs. In case of judgment by default for non-appearance

LOCAL INVESTIGATION—concluded.

before a commissioner appointed under s. 180, the proper course is to apply to the Judge for an order to set aside the judgment, and if that application be refused, to appeal against the order of refusal. The Judge's order should contain a distinct direction to the commissioner to proceed *ex parte* in the event of the non-attendance of the plaintiff. *ESSAY CHUNDER CHUCKRABORTY v. SOORJO LALL GOSAIN*

[I Ind., Jur., O. S., 3
W. R., F. B., 1; Marsh., 139]

16. ——— **Failure of party to appear on local inquiry.**—In a case in which plaintiff sued to recover some land, and in which defendant denied the power of plaintiff's vendor to sell the land claimed or a part of it, a local inquiry was ordered to ascertain the boundaries of the land in dispute. Judgment of the High Court—upholding the decision of the lower Court, which dismissed the suit because plaintiff failed to appear or take proper steps before the ameen at the local investigation, and because he omitted to give formal proof of his deed of purchase—confirmed. *MAHOMED TURQUZ CHOWDHURY v. JUDONATH JHA* [16 W. R., P. C., 28]

17. ——— **Powers of Magistrates in holding local investigation—Collection of evidence by Magistrate on local inquiry—Evidence.**—Power of Magistrates to hold local investigations and the nature of such investigations discussed. Whenever it is desirable for a Magistrate to view the place at which an occurrence, the subject-matter of a judicial investigation before him, has taken place, he should be careful to confine himself to such a view of the place as to enable him to understand the evidence placed before him, and should take care that no information reaches him with reference to the occurrence which he has to investigate beyond what he acquires by that view, and if the place of the occurrence be in dispute, he would be wise in postponing his visit till all the evidence has been recorded, if under such circumstance he feels disposed to visit it at all. But where a local enquiry by a Magistrate takes the form of an investigation into the occurrence on the site of the occurrence instead of in his own Court, and he takes evidence on the spot, such evidence should not be recorded unless it is protected by all the safeguards by which evidence on which a Judge may act is protected by law. *HARI KISHORE MITRA v. ABDUL BAKI MIHAH* [I. L. R., 21 Cal., 920]

18. ——— **Court proceeding to hear an appeal without waiting for return to a commission for local investigation issued at the request of a party—Civil Procedure Code, s. 551—Substantial error in procedure.**—The intention of the Code of Civil Procedure is that, when a Court deems it necessary, on the application of a party or otherwise, that a commission for local investigation should be issued, the return to that commission should be before the Court before it proceeds to hear and determine the case. *MADHO SINGH v. KASHI SINGH* . . . I. L. R., 16 All., 342

LUNATIC—continued.

invalid as regards the lunatic's interest in the property, but, as regards the interest of the minors, which was vested in them at the time of the mortgages, the property being ancestral, the mortgages were binding if made for family purposes. *ANPURNABAI v. DURGAPA MAHALAPA NAIX*

[I. L. R., 20 Bom., 150

28. ————— *Act XXXV of 1858, ss. 15, 16, 17, 18, and 20—Hindu lunatic mem-*

of the family property. The lunatic is possessed of no property for which the manager is liable to account. It does not make any difference if the manager is himself a joint owner or not. The Act provides no

order or certificate of appointment. *TEJNBALAL GOVANDAS v. HIMALAL ICHHALAL*

[I. L. R., 20 Bom., 659

[I. L. R., 25 Calc., 585
3 C. W. N., 241

[8 B. L. R., Ap., 50

S. C. CHUCKER SUREN NARAIN SINGH & COLLEC-
TOR OF SARUN 17 W. R., 180

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LUNATIC—continued.

31. ————— *Act XXXV of 1858, s. 9—Act XIX of 1873, s. 195—Court of Wards, Power of.*—S. 9 of Act XXXV of 1858 and s. 195 of Act XIX of 1873 do not render it imperative on the Court of Wards to take charge of the estate of a person adjudged by a Civil Court,

[I. L. R., 1 All., 470

32. ————— *Act XXXV of 1858, ss. 2, 7, 9, 10, 23—Guardian of lunatic—*

there was any reason precluding the possibility of further issue of the marriage. *Held* by MAHMOOD, J., that under the law applicable to the Shia sect of Mahomedans Z was one of the "legal heirs" of M S within the meaning of s. 10 of Act XXXV of

of a person adjudged a lunatic thereunder. That duty should rest with the Courts to which it is entrusted upon was the duty of the legal disqui

33. ————— *Act XXXV of 1858*—On an application for the appointment of a guardian to the estate of a lunatic under Act XXXV of 1858, take charge specify

[4 B. L. R., Ap., 24; 13 W. R., 518

34. ————— *Guardian—*

JACOB MATHIAS

LUNATIC—continued.

application and of the inquiry. *Held* that the application should be dismissed. *Per Curiam*.—The eldest son should give to those who would be co-heirs with him to his father a fair opportunity of satisfying themselves that his management is open to no question, and that nothing is done to their detriment. Distinction between lunacy with lucid intervals, and a state of sound mind, subject to occasional unsoundness arising from accidental and temporary causes, considered. *IN RE NAGAPPA CHETTI*

[I. L. R., 18 Mad., 472]

19. — *Suit by wife as next friend, alleging husband to be a lunatic—Husband not an adjudged lunatic—Civil Procedure Code (Act XIV of 1882), s. 462—Act XXXV of 1858.*—Where a wife, alleging her husband to be of unsound mind, brought a suit as next friend, the Court ordered an inquiry (1) as to whether the husband was of unsound mind and (2) as to whether the suit was for his benefit. *PRANSUKHRAM DINANATH v. BAI LADKOR*. I. L. R., 23 Bom., 653

20. — *Appointment of manager—Necessity of preliminary inquiry and adjudication.*—It is only when a man has been adjudged a lunatic as the result of proceedings, and on inquiry held in due course of law, that the Court obtains the authority to appoint a manager of his estate. *GIREJABUTTY KOORREE v. MONJEE LAL*. 20 W. R., 477

21. — *Act XXXIV of 1858, s. 25—Application by curator bonis appointed in Scotland.*—A petition was presented through his constituted attorney by a *curator bonis* duly appointed in Scotland to *W*, a doctor in the Bombay Army, absent from India on leave, praying for an order authorizing the petitioner's attorney to recover and give valid receipts for certain moneys belonging to the said *W* and to realize certain shares and bonds also belonging to the said *W*, and to remit the proceeds according to the directions of the petitioner as such *curator bonis*. The petitioner stated that the said *W* had been duly adjudged to be of unsound mind by the Court of Session in Scotland, and annexed a "Court of Session Extract" of the "act and decree" whereby the said *curator bonis* was appointed; but there was no evidence that *W* had been found of unsound mind and incapable of managing his affairs, or that the curator had given security, or that funds were required for the maintenance of *W*. The Court refused the order. *IN RE WELSH*

[I. L. R., 8 Bom., 280]

22. — *Act XXXV of 1858—Guardian for property of lunatic—Lunatic trustee of a mutt.*—A guardian may be appointed under Act XXXV of 1858 to the property vested in a lunatic as the head of a mutt. *SITARAMA CHARYA v. KESAVA CHARYA*. I. L. R., 21 Mad., 402

23. — *Civil Procedure Code, 1882, s. 463—Lunatic defendant—Guardian ad litem—Act XXXV of 1858.*—A guardian *ad litem* cannot be appointed under ch. XXXI of the Code of Civil Procedure for a lunatic defendant to

LUNATIC—continued.

whom Act XXXV of 1858 applies, until the defendant has been adjudged a lunatic under the provisions of the said Act. *SUBBAYA v. BUTHAYA*

[I. L. R., 6 Mad., 380]

24. — *Defendant a lunatic, but not adjudicated a lunatic—Code of Civil Procedure (Act XIV of 1882), ss. 443, 463—Act XXXV of 1858—Practice—Appointment of a guardian ad litem by the Court.*—Although s. 443 of the Code of Civil Procedure (Act XIV of 1882) read with s. 463 does not oblige a Court to appoint a guardian *ad litem* for a defendant of unsound mind, except where he has been adjudged to be of unsound mind under Act XXXV of 1858; still upon general principles and in conformity with the practice of the Court of Chancery, the Court should assign a guardian *ad litem* for the defendant if it finds, on inquiry, that he is of unsound mind so as to be unfit to defend the suit. *VENKATRAMANA RAMBHAT v. TIMAPPA DEVAPPA*. I. L. R., 16 Bom., 132

25. — *Suit—Act XXXV of 1858—Lunatic, not adjudged to be so, suing through a next friend or defending through a guardian ad litem.*—The provisions of ch. XXXI of the Code of Civil Procedure are not exhaustive, and where a person is admitted or has been found to be of unsound mind, although he has not been adjudged to be so under Act XXXV of 1858, or by any other law for the time being in force, he should, if a plaintiff, be allowed to sue through his next friend, and the Court should appoint a guardian *ad litem* where he is a defendant. *Porter v. Porter*, L. R., 37 Ch. D., 420; *Venkatramana Rambhat v. Timappa Devappa*, I. L. R., 16 Bom., 132; *Tukaram Anant Joshi v. Vithal Joshi*, I. L. R., 13 Bom., 656; *Uma Sundari Dasi v. Ramji Haldar*, I. L. R., 7 Cal., 242; and *Jonagadla Subbaya v. Thatiparthi Senadala Buthaya*, I. L. R., 6 Mad., 380, referred to. *NABBU KHAN v. SITA*. I. L. R., 20 Ail., 2

26. — *Act XXXV of 1858, s. 22—Application for permission to alienate property of lunatic—Objection by a third party that the property does not belong to the lunatic, determination of, whether necessary.*—In an application for permission to alienate the property of a lunatic under Act XXXV of 1858, it is not necessary to determine whether such property belongs to the lunatic or to a third party. *DINESH CHUNDER BANERJEE v. SOUDAMINI DEBI*. 4 C. W. N., 526

27. — *Act XXXV of 1858, s. 14—Manager appointed under the Lunacy Act—Manager of joint family—Alienation by manager.*—Where a person is appointed manager of a lunatic's estate under Act XXXV of 1858, he can only make a valid alienation in accordance with the provisions of that Act, although he may also be *de facto* manager of the family property. A Hindu married woman having a lunatic husband and minor sons was appointed guardian of the lunatic's estate under Act XXXV of 1858. She was also *de facto* manager of the family. She mortgaged the family property, without the sanction of the Court as required by s. 14 of the Act. *Held* that the mortgages were-

LUNATIC—continued.

RUGHOOBUR DYAL SREOPERSHAD NARAIN v. COLLECTOR OF MONGHYR 7 W. R., 5

41. ——— **Appeal, Right of—Act XXXV of 1858, ss. 3, 4, 22—Right of suit to recover property**—(In an annulment made by the wife

v. Schorn, 24 W. R., 124, referred to *Quare*—Whether a right to sue to recover a property would be sufficient to confer jurisdiction under Act XXXV of 1858 IN THE MATTER OF THE PETITION OF MAHOMED BUSHEERUL HOSSEIN, MONGHYR v. MAHOMED BUSHEERUL HOSSEIN

[I. L. R., 8 Calc., 293; 10 C. L. R., 1

manager under Act XXXV of 1858 was opposed by the lunatic's nephew, who was a member with him of

—Whether a manager can under any circumstances be appointed under Act XXXV of 1858 if the lunatic is a member of a joint family under the Mitakshara law and possessed of no separate property SOODANER SINGH v. JUGGESNAH KORE 13 C. L. R., 86

43. ——— **Act XXXV of 1858—Member of joint Mitakshara family—Guardian**—The husband of a lunatic's daughter applied

ment, no sufficient grounds were shown for the Court's interference, or the appointment of another guardian of his person Before any action can be taken under the

LUNATIC—concluded.

Act in this respect, there ought to be a strong case made out that the change of custody would be for the lunatic's benefit *Held* also that, as his daughter could not inherit his ancestral property and as it was doubtful if the collaterally inherited property was the separate property of the lunatic, the Court would not, under such circumstances, appoint a manager of the property, but that the guardians of the lunatic, who were managers of

whether a partition could be had IN THE MATTER OF THE PETITION OF BROOPENDRA NARAIN ROY BROOPENDRA NARAIN ROY v. GREESEH NARAIN ROY [I. L. R., 6 Calc., 539; 8 C. L. R., 30

44. ——— **Incapacity of joint owners of property—Effect of, in favour of managing owners**—The incapacity of joint owners confers powers of alienation, in certain cases of necessity, upon the managing owner SREO PERSHAD NARAIN v. COLLECTOR OF MONGHYR GOVERNATH v. COLLECTOR OF MONGHYR COURT OF WARDS v. RUGHOOBUR DYAL 7 W. R., 5

45. ——— **Insanity pending award—Person becoming lunatic before award published**—If a person was in fit condition to manage his affairs down to the time when the proceedings before an arbitrator in which he was interested were substantially concluded, the award will not be invalidated by reason of the person having become insane before the final publication of the award GOVERNATH v. COLLECTOR OF MONGHYR COURT OF WARDS v. RUGHOOBUR DYAL SREO PERSHAD NARAIN v. COLLECTOR OF MONGHYR 7 W. R., 5

46. ——— **Power to lease lands of proprietor disqualified from lunacy—Act XXXV of 1858, s. 2—Court of Wards in Oudh**—The order of a Civil Court declaring, under Act XXXV of 1858,

same time appointed to be manager of his estate the Deputy Commissioner of the district, who also

it shall have power to grant a lease for any period exceeding five years. SARABJIT SINGH v. CHAPMAN [I. L. R., 13 Calc., 81 I. R., 13 I. A., 44

LUNATIC—continued.

duly appointed. Where, therefore, the mother of a lunatic, who had not been so appointed, mortgaged his estate without the previous sanction of the Court, the mortgagee's suit for foreclosure was dismissed. **COURT OF WARDS v. KUPULMUN SING**

[10 B. L. R., 364; 19 W. R., 164

35. ——— Power of manager—Person appointed manager of lunatic's affairs while he was of sound mind.—A person who was appointed manager of a lunatic's affairs, by consent obtained while she was of sound mind, and who is capable of making a defence on her behalf, is competent to represent her in a suit, although not appointed under the law as representative of the lunatic. **KALA CHAND GHOSH v. SHOOLCHUNDA DOSSIA** . 22 W. R., 33

36. ——— Civil Procedure Code, 1882, s. 463—Right to sue—Suit by next friend of a lunatic—Adjudication of lunacy under Act XXXV of 1858.—A suit for partition was brought by A as next friend of B, a lunatic. Subsequent to the institution of the suit, B was adjudged to be of unsound mind under Act XXXV of 1858, and A was appointed a manager of the lunatic's estate. Held that A had no right to sue, as next friend of the lunatic, under ch. XXXI of the Code of Civil Procedure (Act XIV of 1882). The provisions of that chapter apply only in cases where there has been an adjudication of lunacy under Act XXXV of 1858 previously to the institution of the suit. Held also that, independently of the provisions of ch. XXXI of the Code of Civil Procedure, on principles of equity, A had no right to sue in respect of the immovable property of a lunatic. - Held further that the adjudication of lunacy under Act XXXV of 1858 and A's appointment as manager of the lunatic's estate subsequent to the institution of the suit did not cure the original invalidity of his proceedings in the suit. **TUKARAM ANANT JOSHI v. VITHAL JOSHI** . I. L. R., 13 Bom., 656

37. ——— Suit by an unadjudged lunatic by the Agent of the Court of Wards as guardian—Authority of the Court of Wards—Mad. Reg. V of 1804—Estates of lunatics subject to Mofussil Courts—Act XXXV of 1858—Code of Civil Procedure, s. 464.—A Jain, who was subject to the Aliyasantana law, made a will, whereby he disposed of the property of his family in favour of certain persons, and died. The plaintiff, a female, was the sole surviving member of the testator's family, but it was admitted that she was, and for more than fifty years had been, a lunatic, though she had not been declared to be so under Act XXXV of 1858: it appeared that her lunacy was not congenital. She sued, by the Collector of South Canara, the Agent for the Court of Wards. Held (1) that the plaintiff was not excluded from inheritance by reason of lunacy under Aliyasantana law, and the will in favour of the defendants was invalid; (2) that the Court of Wards had power to take cognizance of the plaintiff's case under Madras Regulation V of 1804; (3) that although the Court of Wards should ordinarily obtain a declaration under Act XXXV

LUNATIC—continued.

of 1858 in cases where the lunacy of a ward is open to question, their failure to do so in the present case was not fatal to the suit; (4) that Civil Procedure Code, s. 464, was accordingly applicable to the case; (5) that the appointment of the Collector as guardian to the plaintiff was legal and valid. In deciding what was the extent of the property which the plaintiff was entitled to inherit under the above rulings, certain documents adduced as evidencing partition of the family property were held to evidence merely arrangements for separate enjoyment. **SANKU v. PUTTANNA** . I. L. R., 14 Mad., 289

38. ——— Guardian of the person of a lunatic—Suit in respect of the lunatic's estate—Right of suit—Civil Procedure Code (Act XIV of 1882), s. 440.—A guardian of the person only of a lunatic has no right to bring a suit in respect of the lunatic's estate. The manager of the lunatic's estate is the only person who can institute such a suit. The word "guardian" in s. 440 of the Civil Procedure Code (Act XIV of 1882) as amended by Act VIII of 1890, when applied to a lunatic, means the manager of his estate. Under this section, a person other than the guardian of the estate can also sue with the leave of the Court. **BAI DIVALI v. HIRALAL** . I. L. R., 23 Bom., 403

39. ——— Striking out lunatic plaintiff's name—Authority of pleader as agent for filing suit—Limitation Act (XV of 1877), s. 7—Restoration of name—Suit by person not adjudged to be of unsound mind under Act XXXV of 1858—Right of suit—Guardian—Next friend.—A plaint as originally framed contained the name of K, stated to be of unsound mind, as first plaintiff, and of his wife N as his guardian and second plaintiff. When the plaint was actually filed, K's name was struck out by the pleader and N. Subsequently his name was restored on his own application, but the period of limitation prescribed for the suit had then elapsed. The first Court held that under s. 7 of the Limitation Act the plaintiff's claim was not barred. On appeal the Judge dismissed the suit, holding that the order of the first Court restoring K's name was bad, and that the suit was time-barred at the date of that order. On second appeal, -Held, reversing the decree, that the pleader and N acted beyond their authority in striking out K's name, and that therefore the restoration of his name must relate back to the filing of the suit, which was therefore not barred. *Quere*—Whether a person of unsound mind, but not adjudged to be so under Act XXXV of 1858, can in this country sue by his next friend. **KIRPARAM JHUMBEKRAM MODIA v. MODIA DAYALJI JHUMBEKRAM** [I. L. R., 19 Bom., 135

40. ——— Act XXXV of 1858, s. 11—Suit on behalf of minor—Collector.—A Collector appointed under s. 11, Act XXXV of 1858, to take charge of the estate of a lunatic, cannot himself sue on behalf of the lunatic, but must appoint manager for the purpose. **GOURENATH v. COLLECTOR OF MONCHYE. COURT OF WARDS v.**

MADRAS ABKARI ACT (MADRAS ACT III OF 1864)—concluded

ss 23, 26, and s 17—*Confiscation of animals*—Although a Magistrate may not confiscate animals under s 23 (a) of the Madras Abkari Act yet the proceeds of whatever has been confiscated by the Collector under s 17, including animals, would be available for distribution in the manner prescribed in s 26 (b) **QUEEN v SAKIYA**

[I L R, 5 Mad., 137]

s 25, and V of 1879, s 26 (b)—*Not producing license*—The offence under Madras Act III of 1864 s 25 of not producing when called upon by the police a liquor license is not one for which a Magistrate may proceed under s 26 (b) of Madras Act V of 1879 **QUEEN v VASANTAPPA**

[I L R., 4 Mad., 231]

s 29—*Police officer—Village police man—Mohatad*—The term police-officer used in s 26 of the Abkari Act (Madras Act III of 1864) includes a mohatad or village policeman **QUEEN EMPRESS v SESHAYA**

I L R., 9 Mad., 97

s 32 of the Act **QUEEN v CHAKRASABHU**

[I L R., 7 Mad., 185]

MADRAS ABKARI ACT (MADRAS ACT I OF 1886)

v SAMMOJI I L R., 11 Mad., 472

s 28

See ATTACHMENT—ALTERNATION DURING
[COB v ATTACHMENT I L R., 16 Mad., 479]

ss 29, 55 (c)—*Rule forbidding delegation by licensee of authority to draw toddy*—Under s 29 of the Madras Abkari Act the Governor in Council made and published a rule on 8th

LARA I L R., 11 Mad., 250

ss 31 and 36

See PRIVATE DEFENCE RIGHT OF
[I L R., 19 Mad., 349]

s 43

See MAGISTRATE JURISDICTION OF—
SPECIAL ACTS—MADRAS ABKARI ACT
[I L R., 18 Mad., 48]

MADRAS ABKARI ACT (MADRAS ACT I OF 1886)—concluded

stified by
r. immo
failing to
"within a
reasonable time after it is drawn are punishable under s 55 (a) of the Abkari Act though their licenses do not refer to the Government notification made under the Act prescribing its immediate removal **QUEEN EMPRESS v JAMMU**

[I L R., 12 Mad., 450]

be set aside **QUEEN EMPRESS v VENKATASAMI NAIDU**

I L R., 23 Mad., 220

QUEEN EMPRESS v KARUPPAN
[I L R., 23 Mad., 220 note]

2 ——— and s. 64—*Holder of a license and his servants*—The words "being holder of a license in Abkari Act s 56 must be taken to include any person in the employ, or for the time being acting on behalf of the holder of a license **QUEEN EMPRESS MAHALINGAM SEVAI**

[I L R., 21 Mad., 63]

MADRAS ACT—1862—IV

See GRANT—RESUMPTION OR REVOCATION OF GRANT. I L R., 14 Mad., 431

1863—I

See CONTEMPT OF COURT—PENAL CODE
s 174 4 Mad., Ap., 51, 52

IV

See MUNSIF JURISDICTION OF
[2 Mad., 82
3 Mad., 339
4 Mad., 149]

1864—II,

See LANDLORD AND TENANT—MIHASIDARS
[I L R., 1 Mad., 205]

See MADRAS ABKARI ACT 1864 s 10
[I L R., 7 Mad., 434]

See MADRAS REVENUE RECOVERY ACT, 1864

III.

See MADRAS ABKARI ACT, 1864.

M

MADRAS ABKARI ACT (MADRAS ACT III OF 1864).

See SENTENCE — IMPRISONMENT — IMPRISONMENT IN DEFAULT OF FINE.

[6 Mad., Ap., 40]

1. ——— s. 2 — *Liquor — Toddy — Fermented palm juice.*—Sweet palm juice, which by exposure to the operation of natural causes ferments and becomes toddy, is as much manufactured by the person who exposes it as if the same result were produced by the process of distillation. ANONYMOUS

[5 Mad., Ap., 26]

2. ——— *Toddy — Fermented palm juice — Conviction without evidence of fermentation.*—*Primâ facie*, toddy is fermented palm juice. A conviction under s. 21 of Madras Act III of 1864, for selling toddy without a license, upheld, although no evidence was given as to whether fermentation had taken place. ANONYMOUS

This case was not intended to define toddy as a matter of law. ANONYMOUS

3. ——— *Sale — Barter — Payment of wages in liquor.*—Payment of wages in liquor does not amount to a sale of liquor within the meaning of s. 2 of the Abkari Act (Madras Act III of 1864). QUEEN-EMPRESS v. APPAYA

[I. L. R., 9 Mad., 141]

4. ——— and s. 9 — *Unexecuted contract to sub-rent — uit for specific performance.*—In a suit brought by plaintiff for the specific performance of an agreement entered into between the plaintiff and defendant, whereby the defendant, an abkari contractor, undertook to sub-let to plaintiff the abkari of a talukh, and also to recover damages for the breach of contract,—*Held* that s. 9 of the Abkari Amendment Act (Madras Act III of 1864) did not affect the rights and liabilities of the parties *inter se*, under the terms of an unexecuted contract to sub-rent, although the Act would prevent the sub-rentor deriving any benefit under an executed contract of sub-renting from the excise or the manufacture or sale of liquor, as defined in s. 2, until he had complied with the condition prescribed in s. 9 of the Act. VENKATA KRISTNAIYA v. VENKATACHALAIYAR

5 Mad.; 1

s. 6.

See DAMAGES — SUITS FOR DAMAGES — BREACH OF CONTRACT.

[I. L. R., 14 Mad., 82]

——— s. 8 — *Licensed vendor, Sale by agent of.*—A license to sell liquor granted to N under the provisions of the Abkari Act (Madras Act III of 1864), having been cancelled, N put forward M as a proper person to be licensed for the shop in which N himself had been selling. M was duly licensed by the Collector. Under cover of this license, N continued his former business, paying M a certain sum monthly. N was convicted of selling liquor without

MADRAS ABKARI ACT (MADRAS ACT III OF 1864)—continued.

a license. *Held* that the conviction was illegal. QUEEN-EMPRESS v. NANJAPPA

[I. L. R., 7 Mad., 432]

——— s. 10 — *Revenue Recovery Act (Madras Act III of 1864), ss. 1, 3, 4, 5, 37, 42, 52—Sale for arrears of abkari revenue—Prior encumbrance not affected.*—Where land is sold under the provisions of s. 10 of the Madras Abkari Act, 1864, for arrears due by an abkari renter, the purchaser at the sale does not take the land free of all encumbrances as in the case of a sale for arrears of land revenue under the provisions of the Revenue Recovery Act (Madras Act II of 1864). RAMACHANDRA v. PITCHAIAKANNI

I. L. R., 7 Mad., 434

1. ——— s. 21 — *Licensed vendor—Possession of arrack.*—The Magistrate convicted the accused under s. 21 of Madras Act III of 1864, and directed the confiscation of certain arrack found in his possession. *Held* that, the accused being a licensed vendor, the arrack was not liable to confiscation. ANONYMOUS

5 Mad., Ap., 41

2. ——— and s. 22 — *Licensed vendors where license has expired.*—The provision in s. 21 of the Madras Abkari Act limiting the liability of licensed vendors whose license has expired to the case in which they are found in possession of liquor kept for the purpose of sale must be read as an exception to the general provision of s. 22. QUEEN v. RAMAYYA

I. L. R., 5 Mad., 131

1. ——— s. 22 — *Conveyance of liquor without valid permits—Permits made out in names of third parties.*—Upon a conviction under s. 22 of (Madras) Act III of 1864, for conveying liquor without valid permits, it appearing that the defendants produced permits by the talukh abkari renter, covering the amount of liquor which was being conveyed, but made out in the names of third parties who were not present when the liquor was seized, but on whose behalf the liquor was at the time of seizure being conveyed,—*Held* that the permits were valid, and the conviction was bad. ANONYMOUS

[5 Mad., Ap., 29]

2. ——— *Possession of toddy by servants.*—The servants of an abkari renter of certain villages were convicted under s. 22 of Act III of 1864 (Madras) for conveying three measures of toddy without a permit from one of the said villages to the shop of the renter. *Held* that the conviction was illegal. QUEEN v. PATTACHI

[I. L. R., 7 Mad., 161]

3. ——— and V of 1879, s. 23 — *Confiscation of boat used for carrying liquor without permit.*—Neither under the provisions of the Madras Abkari Act nor under the provisions of the Abkari Amendment Act, 1879, is an order by a Magistrate confiscating a boat used for carrying liquor without a valid permit legal. The Collector alone can confiscate. QUEEN v. PERIANNAN. QUEEN v. NARAINA

I. L. R., 4 Mad., 241

MADRAS ACT—concluded

1887—I

See CASES UNDER LANDLORD AND TENANT
—BUILDINGS ON LAND RIGHT TO RE-
MOVE AND COMPENSATION FOR IM-
PROVEMENTS

See MALABAR COMPENSATION FOR TEN-
ANTS IMPROVEMENT ACT

1888—III

See MADRAS POLICE ACT 1888

1889—I

See MADRAS VILLAGE COURTS ACT 1889

III

See MADRAS TOWNS NUISANCE ACT

1891—I

See MADRAS GENERAL CLAUSES ACT

1895—III

See MADRAS HEREDITARY VILLAGE
OFFICES ACT

1897—III MADRAS DISTRICT MUNI-
CIPALITIES AMENDMENT ACT 1884

See MADRAS DISTRICT MUNICIPALITIES
ACT

MADRAS BOAT RULES

1. — Act IV of 1842—Act IX of
1846—Jurisdiction of Magistrates—Liability of
owner under s 17—Burden of proof—Under Act
IX of 1846 the Madras Government is authorized to
make in respect of ports in the presidency such
regulations for the management of boats and such
other matters as are provided for by Act IV of 1842

or was not that Act Held that it was competent

"
"
"
"
"

ment of men Held that where it was proved that
a boat was plying without its proper crew, the
absence of proof by the prosecutor that the owner
was aware of the fact was no bar to his conviction
IN RE ROUTHAKONNI I L R, 8 Mad, 431

2. — Boat Rules in Madras Ports
—Refusal to carry cargo without reasonable
excuse—By the Boat Rules of a certain port it was
provided (1) that all licensed boats must carry such

MADRAS BOAT RULES—concluded

number of passengers and quantity of goods as should
be expressed in the license and (2) that the owner
of a licensed boat who should refuse to let his boat
on hire without assigning a reasonable and satisfactory
grounds for such refusal should be liable to a
penalty. Held that a refusal by a person in charge
of a licensed boat to receive goods on board unless a
tallyman was sent with them on the ground that
he could not count was not a reasonable and
satisfactory cause QUEEN EMPRESS v KAMANDU
[I L R, 10 Mad, 121]

**MADRAS BOUNDARY MARKS ACT
(MADRAS ACT XXVIII OF 1860)**

See COURT FEES ACT FOR II ACT 17
[I L R, 4 Mad, 204]

See LIMITATION ACT 1871 s 14
[I L R, 11 Mad, 309]

ss 21, 25, 28 Appeal Nature of—
Arbitrator's award—Duty of Collector—Irregu-
larity in procedure—The appeal allowed by s 25 of
the Madras Boundary Act XXVIII of 1860 is one
from a decision recorded in the presence of the parties
and duly intimated to them as required by s 25 of
the said Act. The omission by the Collector to pass
a decision in accordance with an arbitrator's award

Board of Revenue and Government, nor should he
adjudicate when as agent to the Court of Wards he
represents one of the rival claimants SESHAMA v
SANKARA I L R, 12 Mad, 1

s 25

See LIMITATION—QUESTION OF LIMITA-
TION I L R, 19 Mad, 416

See MINOR—REPRESENTATION OF MINOR
IN SUITS I L R, 11 Mad, 309

See RES JUDICATA—PARTIES—SAME
PARTIES OR THEIR REPRESENTATIVES
[I L R, 11 Mad, 309]

1. — Appeal—Limitation—

on revision and unless time is extended by the
Governor in Council the appeal must be brought
within two calendar months from the date of the
original decision. The provisions of the except on to
s 5 of the Limitation Act 1871 do not apply THIRU
SING v VENKATARAMAN I L R 3 Mad, 92

2. — Limitation—Procedure—
Under s 25 of Act XXVIII of 1860 (Madras
Boundary Act) which limits the time within which
a suit may be brought to set aside the decision of a
settlement officer to two months from the date of the
award, time will not begin to run until the date on

MADRAS ACT—continued.

1865—III.

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—MADRAS ACT III of 1865.

V.

See FINE 3 Mad., Ap., 9

VII.

See MADRAS IRRIGATION CESS ACT.

VIII.

See MADRAS RENT RECOVERY ACT, 1865.
See REGISTRATION ACT, 1877, s. 17.
[7 Mad., 234]

X.

See RIGHT OF SUIT—SUITS AGAINST MUNICIPAL OFFICERS 3 Mad., 370

Using place as.—Slaughtering a sheep in one's own premises for one's own private use is not an offence under s. 108 of Madras Act X of 1865. ANONYMOUS
[6 Mad., Ap., 18]

offensive trade in premises already used.—The continuing of offensive trades in premises already used is not an offence under s. 114 of Madras Act X of 1865. The section only applies to the fresh dedication of premises to certain offensive trades. ANONYMOUS
[5 Mad., Ap., 16]

1866—I.

See CANTONMENTS ACT (MADRAS ACT I of 1866) 7 Mad., Ap., 15
[I. L. R., 8 Mad., 428]

See CANTONMENT MAGISTRATE.
[I. L. R., 8 Mad., 350]

See HIGH COURT, JURISDICTION OF—MADRAS—CRIMINAL 3 Mad., 277

IV.

See RIGHT OF SUIT—OFFICE OR EVOLU-
MENT I. L. R., 8 Mad., 249

1867—VI.

See MADRAS TOWNS LAND REVENUE ACT.
[I. L. R., 22 Mad., 100]

IX.

See MADRAS MUNICIPAL ACT, 1867.

1869—III.

See CONTEMPT OF COURT—PENAL CODE,
s. 174 5 Mad., Ap., 28
[6 Mad., Ap., 44
7 Mad., Ap., 10, 11
I. L. R., 5 Mad., 377
I. L. R., 7 Mad., 197
I. L. R., 12 Mad., 297]

See SUMMONS, SERVICE OF.
[I. L. R., 11 Mad., 137]

MADRAS ACT—continued.

1871—III.

See MADRAS TOWNS IMPROVEMENT ACT, 1871.

IV.

See MADRAS LOCAL FUNDS ACT, 1871.

1873—III.

See MADRAS CIVIL COURTS ACT, 1873.

1876—I.

See MADRAS LAND REVENUE ASSESSMENT ACT.

1878—V.

See MADRAS MUNICIPAL ACT, 1878.

1879—V.

See MADRAS ABBARI ACT, 1864.
[I. L. R., 4 Mad., 231, 241]

1882—I.

See SALT, ACTS AND REGULATIONS RELATING TO—MADRAS.

V.

See MADRAS FOREST ACT.

s. 10.

See VALUATION OF SUIT—APPEALS.
[I. L. R., 8 Mad., 2]

1884—I.

See MADRAS MUNICIPAL ACT, 1884.
ss. 103, 105 I. L. R., 8 Mad., 4
See MADRAS MUNICIPAL ACT, 1884.

II.

See MADRAS BOUNDARY MARKS AND
MENT ACT.

III.

See MADRAS REVENUE RECOVERY
MENT ACT.

IV.

See MADRAS DISTRICT MUNICI-
PAL ACT, 1884.

V.

See MADRAS LOCAL BOARDS AND
MENT ACT.

1885—I.

See MADRAS POLICE ACT, 185
[I. L. R., 9]

1886—I.

See MADRAS ABBARI ACT, 1864.

II.

See MADRAS HARBOUR TR

**MADRAS DISTRICT MUNICIPALITIES
ACT (MADRAS ACT IV OF 1884)***
—continued

2. ——— and ss 55 and 60—Profes-

under which it would be liable to taxation *MUNY
CIPAL COUNCIL OF TELlicherry v. BANK OF
MADRAS* I L R, 15 Mad., 153

vided the sales are conducted in a shop or place
of business *Held* by PARKER J that one who has
paid profession tax as a sheristadar in one muni-
cipal ty is not on that account exempted from pay-
ing a further tax in respect of a trade earned on by
him in another municipal ty under Madras Act IV of
1884 *VENKATA REDDI v. TAYLOR*

I L R, 17 Mad., 100

Courts within the limits of the Municipality of
to refund
under the
s that he
that the
municipal

limits *Held* that the plaintiff was liable to pay
profession tax to the Municipality of Salem
*RAMASAMI AYYAR v. MUNICIPAL COUNCIL OF
SALEM* I L R, 18 Mad., 183

5 ——— Profession tax—English
Insurance Company carrying on business by agents
in India—The plaintiff was an English Insurance
Company which carried on business at Cocanada by
its agents merchants of that place at the business
premises of the agents The Municipal Council of

Corporation of Calcutta v Standard Marine
Insurance Co I L R 22 Calc, 531 followed.
MUNICIPAL COUNCIL, COCANADA v. ROYAL INSU-
RANCE CO I L R, 21 Mad, 6

s 55—Profession tax—Officer with
head quarters in municipality—An officer whose
head quarters are within a municipality does not

**MADRAS DISTRICT MUNICIPALITIES
ACT (MADRAS ACT IV OF 1884)**
—continued

ipso facto exercise his profession or hold such office

of the Act *CHAIRMAN ONGOLE MUNICIPALITY
v. MOUNSEY* I L R, 17 Mad., 453

See *HAMMICK v. PRESIDENT MADRAS MUNICIPAL
COMMISSION* I L R, 22 Mad., 145

ss 63, 282—House tax assessed on
school building—*Held* to recover tax payable under

who sued in the Small Cause Court to recover the
amount *Held* that the tax was illegal and the
plaintiffs were entitled to recover *FISCHER v.
TWIGG* I L R, 21 Mad., 307

ss 71(2) 282(2)—Notice of intended
insertion of name or property on assessment books
—Substantial compliance with Act—Action to
recover money paid in respect of tax By s 71 of
the Madras District Municipalities Act 1884 the
Chairman may at any time amend the assessment
book in manner therein provided but no person's
name or property shall be inserted nor any increase
of assessment made unless notice thereof has been
served on such person not less than thirty days
previous to a day to be specified in such notice as the
day upon which such notice will be revised By
s. 282 no assessment made under the authority of the
Act shall be unpeached and no act on shall be
maintained in any Court to recover money paid in
respect of any tax levied under the Act provided that
the directors and provisions of the Act shall have
been substantially complied with A notice which

on devastanum lands within the limits of this
municipality and to request that you will be good
enough to cause the amount to be remitted to this office
at your earliest convenience *Held* that the notice

1 ——— s 103—Procedure to compel pay-

FRESS v. O'SHAUGHNESSY I L R, 9 Mad, 429

MADRAS BOUNDARY MARKS ACT
(MADRAS ACT XXVIII OF 1880)
—concluded.

which the decision is communicated to the parties. As the settlement officer is required to take evidence before coming to a decision under s. 25, a decision based upon the report of a subordinate vitiates the whole proceedings and is not binding on the parties. **ANNAMALAI CHETTI v. CLORKE**

[I. L. R., 8 Mad., 189]

3. ————— **Power of Government to extend time for appeal.**—The proviso contained in s. 25 of Act XXVIII of 1880 gives a discretionary power to the Government of extending the time for appeal by suit at all times even after the expiry of the period limited. **KRISHNAREDDI GOVINDAREDDI v. STUART** I. L. R., 1 Mad., 192

4. ————— **A suit by way of appeal against a decision of a Revenue Survey officer in 1876, under s. 25 of the Madras Boundary Act, 1880, was dismissed on second appeal in 1881 by the High Court, on the ground that it was barred by limitation, inasmuch as the suit was instituted one day after the time prescribed by the said Act. The plaintiffs then upon applied to the Governor in Council, under s. 25 of the said Act, to extend the period so as to allow the plaintiffs to bring a second suit. This application was granted, and the plaintiffs brought a second suit against the decision of the Revenue Survey officer. Held that the order of the Governor in Council was not *ultra vires*, and that the second suit was not barred.** **VENKATRAMANA v. THIRU SINGH** . . . I. L. R., 7 Mad., 280

MADRAS BOUNDARY MARKS ACT
AMENDMENT ACT (MADRAS ACT II
OF 1884).

s. 9.

See **LIMITATION—QUESTION OF LIMITATION** . I. L. R., 19 Mad., 418

MADRAS CIVIL COURTS ACT (MADRAS ACT III OF 1873).

See **MUNICIPAL JURISDICTION OF.**

[I. L. R., 9 Mad., 208]

I. L. R., 11 Mad., 197

See **CASES UNDER VALUATION OF SUIT.**

s. 12.

See **EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION, ETC.**

[I. L. R., 7 Mad., 397]

I. L. R., 17 Mad., 309

See **MUNICIPAL JURISDICTION OF.**

[I. L. R., 11 Mad., 140]

I. L. R., 19 Mad., 58

s. 14.

See **APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—VALUATION OF APPEAL.**

[I. L. R., 15 Mad., 237]

MADRAS CIVIL COURTS ACT (MADRAS ACT III OF 1873)—concluded.

s. 18.—**Suit by reversioner to recover land granted to Hindu widow—Presumption as to death of widow from absence, not a question of succession or inheritance.**—Plaintiff sued, as reversioner to recover certain land granted in lieu of maintenance to a Hindu widow. The widow had left her village sixteen years before suit, and had not been heard of since. Held that the question whether a presumption arose that the widow was dead was not a question regarding succession or inheritance to be decided according to Hindu law within the meaning of s. 16 of the Madras Civil Courts Act, 1873. **BALAYYA v. KISTANAPPA** . I. L. R., 11 Mad., 448

s. 28.

See **MUNICIPAL JURISDICTION OF.**

[I. L. R., 19 Mad., 445]

MADRAS DISTRICT MUNICIPALITIES ACT (MADRAS ACT IV OF 1884).

s. 11.—**Interference with a public drain.**—The owner of a house in a street at Tanjore renewed, without the sanction of the Municipal Council, the masonry covering of a drain in front of his house. Held that the act of the plaintiff did not constitute an interference with the drain within the meaning of District Municipalities Act, s. 211. **MUNICIPAL COUNCIL, TANJORE v. VISVANATHA RAU**

[I. L. R., 21 Mad., 4]

s. 41.

See **PUBLIC SERVANT.**

[I. L. R., 13 Mad., 131]

s. 47 and s. 63.—**Land tax—Land unappropriated to buildings.**—A municipal council under the Madras District Municipalities Act has no power to levy a tax on any land exceeding seven-and-a-half per cent. on the annual value of such land. The meaning of the term "lands unappropriated to any buildings" in the Madras District Municipalities Act, s. 63, cl. 2, considered. **CLARKE v. CHAIRMAN, OOTACAMUND MUNICIPAL COUNCIL**

[I. L. R., 18 Mad., 310]

ss. 49, 50.

See **SMALL CAUSE COURT, MOFUSSELI—JURISDICTION—MUNICIPAL TAX.**

[I. L. R., 13 Mad., 78]

1. ————— s. 53 and ss. 55 and 60.—**Wrongful assessment of profession tax.**—The Municipality at Tuticorin demanded Rs 50 as profession tax from the South Indian Railway Company, which had already paid profession tax to the Municipality at Negapatam. The Company, complied with the demand under protest and sued the Municipality for a refund of the amount paid, and obtained a decree. Held the Municipality at Tuticorin had no right to levy the tax on the Railway Company, as the Company had already paid it once, and the decree directing the amount levied to be refunded was correct. **MUNICIPAL COUNCIL OF TUTICORIN v. SOUTH INDIAN RAILWAY Co.** . . . I. L. R., 13 Mad., 78

MADRAS DISTRICT MUNICIPALITIES ACT (MADRAS ACT IV OF 1884)

—continued.

should be forfeited on any default made by him in carrying out the terms of the contract. One

the deposit had been forfeited. The decree holder, having purchased from the contractor his right to

resolution of July 1888 was *ultra vires*. *DEIVASARATHNANASAPATHI* I L R, 16 Mad, 474

s 262—*Suit to recover tax alleged to be illegally levied—Right of suit*—The plaintiff built a house at Nellur the construction of which was completed on the 15th of August 1893. The Municipal authorities of that place being governed by the Madras District Municipalities Act gave notice of assessment on the 11th of September levied the tax as assessed and credited it as the tax due

Municipalities Act, s 262, the suit was not maintainable. *MUNICIPAL COUNCIL OF NELLORE v RANGAYYA* [I L R, 19 Mad, 10

District Municipalities Act, s 264. *Held* that on the facts of the case the conviction under s 263 was right and that it was not invalidated by the absence at the end of the trial of two of the Magistrates before whom it had begun. *Quere*—Whether a charge under s 264 would lie in the absence of a resolution passed by the Municipal Council. *KARUPPANA NADAN v CHAIRMAN MADURAI MUNICIPALITY* I L R, 21 Mad, 246

Bye-law No 48—*District Municipalities Act Amendment Act (Madras Act III of 1897)*—Covering a drain without Municipal permission—A bye-law of a Municipality had been framed under the powers conferred by an Act of 1884 as amended by an Act of 1897, and was to the following effect: 'No public drain shall be covered without the permission of the Municipal Council.' It had come into force in 1890. Prior to its coming into operation, an earlier bye-law had subsisted, in substantially the same terms. An occupier of premises, who had covered a drain during

MADRAS DISTRICT MUNICIPALITIES ACT (MADRAS ACT IV OF 1884)

—concluded.

the substance of the earlier bye-law was charged with having committed an offence under the later bye-law, and contended by way of defence that he could not be convicted, inasmuch as the act complained of had been committed before the passing of the Act under which the complaint was laid. He was convicted by a Bench of Magistrates. *Held* that the conviction was right. *Per* ARNOLD WHITE, C J—The bye-law applies to all drains which existed in a covered state at the time when it came into operation. The word 'shall' is used throughout the bye-laws in the imperative and not with reference to time, and this is the sense in which it is used in the bye-law in question. *Per* BENSON, J—A bye-law similar in terms to that under which

General Clauses Act (Madras) unaffected by the passing of the present Municipal Act. The conviction that the accused could not be convicted because the act complained of was committed before the present Municipal Act was passed therefore failed. *PARMANAM PILLAI v CHAIRMAN MUNICIPAL COUNCIL OOTACAMUND* I L R, 23 Mad, 213

MADRAS FOREST ACT (MADRAS ACT V OF 1882)

See ONUS OF PROOF—POSSESSION AND PROOF OF TITLE

[I L R, 19 Mad, 165

s 2 and ss 3, 4, 6, 8, 9, 50—

boundary line of a proposed forest reserve. No notice under Forest Act s 6 was proved to have been

apply to the shrotrian land (2) that the right of a forest officer to enter upon and demarcate land under s 9 is limited to the purpose of the inquiry directed by s 8, (3) that the conviction was wrong. *QUEEN-EMPRESS v JANGAM REDDI*

[I L R, 14 Mad, 247

23—*Logs as to be removing and the convicting Magistrate ordered it to be confiscated. Held* that, having been already permanently fastened to a building, it had ceased to be timber within the meaning of s 2 of the Forest Act, and the order for confiscation was illegal. *QUEEN-EMPRESS v KETTAGADU* I L R, 9 Mad, 373

MADRAS DISTRICT MUNICIPALITIES ACT (MADRAS ACT IV OF 1884)

—continued.

3. — *Attachment of moveable property*—*Doors of house*.—The doors of a house are not attachable as moveable property under the Madras District Municipalities Act, s. 103. *QUEEN-EMPRESS v. IRANIM* . I. L. R., 13 Mad., 518

3. — *Distraint*—*Doors of house*.—A Municipal Council under the District Municipalities Act has, under s. 110, a power to distrain after due notice, besides that given by s. 103, but the property distrained must be that of the defaulter, and the doors of a house cannot be removed in execution of a warrant of distress. *PUNTSUKRAM v. MUNICIPAL COUNCIL OF BELLARY* . I. L. R., 14 Mad., 407

— s. 109—*Suit for declaration of title against a Municipality*.—The plaintiff sued a Municipal Council, under the Madras District Municipalities Act, for a declaration of title to a certain structure situated in the limits of the Municipality and of his right to put a roof over it. The structure was found to belong to the plaintiff. *Held* that the Municipal Council had no objection under s. 109 of the above Act to prevent the plaintiff from dealing with the structure, provided he did not interfere with the convenience of the public or with any sanitary regulations. *KRISHNAYYA v. BELLARY MUNICIPAL COUNCIL* . I. L. R., 15 Mad., 292

— s. 173—*Obstruction of public street*.—S. 173 of the District Municipalities Act, 1884 (Madras), provides that no person shall deposit anything so as to cause obstruction to the public in any street without the written permission of the Municipal Council. *Held* that the depositing by any person of an article in the street without the permission of the Municipal Council amounted to an obstruction. *QUEEN-EMPRESS v. BOLLAPPA*

[I. L. R., 11 Mad., 343]

— s. 179—*Repair of buildings*.—By s. 179, Madras District Municipalities Act IV of 1884, it is provided that "the external roofs, verandahs, panels, and walls of buildings erected or renewed after the coming into operation of this Act shall not be made of grass, leaves, mats, or other such inflammable materials except with the written permission of the Municipal Council." *Held* that the word "renewed" includes repairing. *QUEEN-EMPRESS v. SUBBANA* . I. L. R., 19 Mad., 241

— s. 180 and s. 264—*Municipal building license*—*Building in excess of license*—*Requisition to demolish building*—*Magistrate, Jurisdiction of*.—A landowner in a Municipality subject to Madras Act IV of 1884 applied for a building license under s. 180 of the Act. The Municipality, having resolved that a portion of the land was required for widening a public lane, ordered the applicant to abstain from building on it, and granted a license for a building to be erected on the remaining portion. The landowner, however, erected a building upon the whole of the land. The Municipal Council then called upon her to demolish the building erected on

MADRAS DISTRICT MUNICIPALITIES ACT (MADRAS ACT IV OF 1884)

—continued.

the portion of the land which had not been licensed. This notice was not complied with. The landowner was then prosecuted and convicted under ss. 183, 203, and 264 of the Act. *Held* that neither of the above-mentioned orders of the Municipal Council were legal, and consequently that no offence had been committed by the landowner. *Serial*—*Madras Act IV of 1884, s. 264, does not empower a Magistrate to impose a fine prospectively in respect of the period during which a person convicted of the offence of omitting to comply with a notice to execute any work may continue to leave such work unexecuted*. *QUEEN-EMPRESS v. VEEDAMMAL*

[I. L. R., 16 Mad., 230]

— ss. 183, 189—*Keeping a private cart-stand without a license*.—In a prosecution for using a place as a cart-stand without a license under the Madras District Municipalities Act, 1884, it was proved that carts resorted daily to the premises of the accused, laden with produce for sale to the general public and not only to the accused, who acted as a broker and permitted the carts to stand on his premises until the sale and removal of the goods was completed. *Held* that the place was used as a cart-stand within the meaning of s. 183, and that the accused had committed an offence punishable under s. 189 of the Act. *QUEEN-EMPRESS v. AYYAKANNU MUDALI* . I. L. R., 22 Mad., 455

— *Keeping a private cart-stand without a license*.—It is not necessary, in order to establish the offence of using a place as a cart-stand without a license under the Madras District Municipalities Act (Madras Act IV of 1884), s. 189, to prove that the cart-stand is offensive or dangerous or that fires are kindled there. *QUEEN-EMPRESS v. AYYAKANNU MUDALI* . I. L. R., 21 Mad., 293

— s. 198 and ss. 191, 192, 193—*Butchers' licenses*—*Private markets*, *Meaning of*.—A Municipal Council, under the Madras District Municipalities Act, refused to give licenses to certain persons keeping butchers' shops not used as slaughter-houses, except on the condition that they should remove to a fixed market. *Held* that butchers' shops are not "private markets" within the meaning of the Act, and that the action of the Municipal Council was *ultra vires*. *QUEEN-EMPRESS v. BLODGE BHAI* . I. L. R., 10 Mad., 218

— s. 222—*Nuisance*—*Sewage water*.—An occupier of a building who allows sewage water to run into a street within the limits of a Municipality, governed by the Madras District Municipalities Act, commits an offence under s. 222 of that Act, although the Municipality may have supplied no side drains in the street in question. *QUEEN-EMPRESS v. SEYDAPPAIYAR*

[I. L. R., 15 Mad., 91]

— s. 281—*Limitation*—*Contract Act (IX of 1872), s. 74*—*Penalty*.—The Council of a Municipality, under Madras Act IV of 1884, entered into a contract for the lighting of the town, whereby it was provided that the deposit made by the contractor

**MADRAS GENERAL CLAUSES ACT
(MADRAS ACT I OF 1891)**

See MADRAS RENT RECOVERY ACT s 51
[I L R, 22 Mad, 179]

**MADRAS HARBOUR TRUST ACT
(MADRAS ACT II OF 1886)**

See BILL OF LADING
[I L R, 19 Mad, 169]

ss 70, 87—*Immunity from action—
Breach of contract—Contract Act (IX of 1872)*
ss 151 152—*Liability of bailees for hire for loss*

1886 to the effect that the Board its officers and servants shall not be liable in damages for any act

provisions of a statute does not prevent it from entering into a contract and the section does not apply in a case where the party aggrieved complains of the breach of such a contract on the part of the Board By s 70 of the Madras Harbour Trust Act

on such terms as the Board might approve and concluded with the reservation that the Board while taking all reasonable precautions would accept no responsibility in respect of property stored upon its premises which would remain at the risk of the consignees or owners *Held (per COLLINS CJ and BOGDAN J)* that this provision was not a bye law for the reception or removal of goods within the meaning of s 70 of the Act and was *ultra vires*
TRUSTEES OF THE HARBOUR MADRAS v BEST & Co
[I L R, 22 Mad, 524]

1886 vested in trustees together with the foreshore within the limits of the port. Prior to the date of the Act, an erosion, by the action of the sea, of a

**MADRAS HARBOUR TRUST ACT
(MADRAS ACT II OF 1886)—continued**

portion of the foreshore had commenced in consequence of the existence of the harbour and arevet-

and some land was washed away Plaintiff was the owner of land adjoining that which was so washed away and the sea also encroached upon and injured plaintiff's land and the buildings upon it The Madras Harbour Trust Act contains no provision for the payment of compensation by the trustees By s 51 the trustees are empowered to perform all works necessary to carry out the objects of the Act

from encroachment upon it in 1877 the plaintiff's

occurred were 25th December 1897 and 9th and 10th April 1898 respectively By s 87 of the Madras Harbour Trust Act no suit shall be commenced

which the six months from 25th December 1897 expired and until the day before the plaint was presented the Court was closed By the same section it is provided that no suit or other proceeding shall be commenced against any person for

as above set out and provided under s 87 if that section should apply that if the amount of damage suffered and assessed by plaintiff in the said letter should not be paid on or before the expiry of one

the suit should be filed or heard The letter stated the ground of complaint to be that the encroachment

MADRAS FOREST ACT (MADRAS ACT V OF 1882)—continued.

— s. 4 and ss. 2, 10, and 14—*Claim to percentage of forest income—Pensions Act (XXIII of 1871), s. 4—"Civil Court"—Jurisdiction of Forest Settlement Officer—Jurisdiction of Appellate Court—Consent of parties to jurisdiction.*—A claim to a percentage of forest income is not a claim to forest produce under Madras Act V of 1882, nor is it a claim to a right specified in s. 4 of that Act. A Forest Settlement Officer has no jurisdiction to entertain a suit in which such a claim is made, and such a suit brought by discharged forest karnams is barred by s. 4 of the Pensions Act. A Forest Settlement Officer is a "Civil Court" for the purposes of the Pensions Act. If a Court of limited jurisdiction exceeds its powers and adjudicates on a claim over which it has no jurisdiction, the Court (if any) which exercises appellate jurisdiction over it is bound to entertain an appeal preferred against the lower Court's decision, and to correct the error. A Court of competent appellate jurisdiction in such a case is not bound by an order made without jurisdiction by a Collector on an appeal to him in the same suit. Submission by the parties to his jurisdiction cannot give a Forest Settlement Officer jurisdiction in a case where he has no inherent jurisdiction. *SECRETARY OF STATE FOR INDIA v. VIDYA PILAI*

[I. L. R., 17 Mad., 193]

— s. 6.

See TITLE—EVIDENCE AND PROOF OF TITLE—LONG POSSESSION.

[I. L. R., 15 Mad., 315]

— *Tree pottah—Occupier of land.*—The holder of a tree pottah is a known occupier of land within the meaning of s. 6 of the Madras Forest Act. REFERENCE UNDER THE MADRAS FOREST ACT.

[I. L. R., 12 Mad., 203]

— s. 10.

See APPEAL—MADRAS ACTS.

[I. L. R., 11 Mad., 309]

See JURISDICTION OF CIVIL COURT—STATUTORY POWERS, PERSONS WITH.

[I. L. R., 12 Mad., 105]

See VALUATION OF SUIT—APPEALS.

[I. L. R., 8 Mad., 22]

— ss. 10 and 11—*Claim by riparian owner to uninterrupted flow of natural stream—Jurisdiction of Forest Settlement Officer.*—A Forest Settlement Officer appointed under s. 4 of the Madras Forest Act, 1882, has, under ss. 10 and 11 of that Act, jurisdiction to decide a claim by a riparian owner to the uninterrupted flow of the water of a natural stream. *SANGILI VEERA PANDIA CHINNA TAMBIAH v. SUNDARAM AYYAR*

[I. L. R., 20 Mad., 279]

— s. 14 and s. 39—*Limitation Act (XV of 1877), ss. 5, 6—Period of Limitation—Power to excuse delay.*—Delay in preferring an appeal under the Madras Forest Act beyond the period prescribed by s. 14 of that Act may be excused

MADRAS FOREST ACT (MADRAS ACT V OF 1882)—concluded.

under s. 5 of the Indian Limitation Act, 1877. REFERENCE UNDER MADRAS FOREST ACT

[I. L. R., 10 Mad., 210]

1. — s. 21—*Tree pottah—Trespass.*—The holder of pottah of certain trees on land which had been declared a reserved forest was convicted of trespass under the Madras Forest Act on proof that he continued to gather the produce of the trees. *Held* that the conviction was bad for want of proof that the petitioner's claim had been duly disposed of or that he had not preferred his claim within the period required by law. *QUEEN-EMPRESS v. RAMI REDDI*

[I. L. R., 12 Mad., 228]

2. — and ss. 4, 7, 16—*Making fresh clearing, Offence of—Omission of order prohibiting felling of trees pending re-hearing of a case.*—A claim put forward to part of certain land notified for reservation under the Madras Forest Act originally rejected was held to be valid by the District Court on appeal. The High Court set aside the decision of the District Court, and directed that the appeal be re-heard. Pending the re-hearing, a lessee of the claimant felled trees on the land, and was charged under s. 21 (a) with the offence of making a fresh clearing prohibited by s. 7 of the Act. The Magistrate acquitted him on the ground that there was no order in writing served on him by the Forest Department prohibiting him from felling trees pending the rehearing. *Held* that the acquittal was wrong. *QUEEN-EMPRESS v. NARASIMAYYA*

[I. L. R., 12 Mad., 338]

3. — *Grazing cattle in a forest reserve.*—The owner of cattle found grazing in a forest reserve cannot be convicted under Madras Forest Act, s. 21 (d), in the absence of evidence that he either pastured the cattle or permitted them to trespass in the reserve. *QUEEN-EMPRESS v. KRISHNAYAN*

[I. L. R., 15 Mad., 156]

— Rule 12 of rules under Forest Act—*Removal of leaves from classified trees.*—The mere removal of leaves from classified trees on unreserved land does not constitute a breach of rule 12 of the Madras Forest Act, 1882. *QUEEN-EMPRESS v. SIVANNA*

[I. L. R., 11 Mad., 139]

— s. 26—*Cutting trees without permit—Canara Forest Rules, Nos. 7, 12, 23.*—The accused, not having a permit, cut certain classified trees on the kumaki adjoining his land and used the wood in his still as fuel; and upon these facts he was convicted of an offence against rules 7, 12, and 23. *Held* that the conviction was illegal. *QUEEN-EMPRESS v. SHEREGAR*

[I. L. R., 13 Mad., 21]

— s. 33—*"Jointly interested"—Possession of forest under a mortgage.*—The Government having possession of a forest under a mortgage is jointly interested therein with the mortgagor within the meaning of the Madras Forest Act, s. 33. *ASH-TAMURTHI v. SECRETARY OF STATE FOR INDIA*

[I. L. R., 13 Mad., 322]

MADRAS LAND REVENUE ASSESSMENT ACT (MADRAS ACT I OF 1876)

—continued

therefor on the 13th December 1872 and on the 14th in you g your e said ights I every description in the said village and relinquish all my rights therein in your favour. Wherefore as per the terms of the said documents dated the 13th December 1872 and the 14th May 1877, you and your heirs and assigns shall hold and enjoy the said kondagai

mangamai, etc. according to custom, and he applied to the Collector for separate assessment and registration of the village in the name of F on the 20th March 1883. On the 29th March 1883 F also made a similar application but, pending disposal, the present zamindar's father died, and was succeeded by his son the present zamindar who raised objections and the application was not granted. On the 23rd May 1887 the present zamindar granted a lease

zamindar executed in favour of F a deed of release which after reciting the grant from the Rani the deed executed by the zamindar's deceased father dated the 22nd February 1883, and a further payment of Rs 500 by F contained the following covenant: "Therefore I forfeit and relinquish the right I profess to have in me to question the said permanent lease, or the terms of the said lease deeds and I hereby ratify your right. You and your heirs shall hold and enjoy the said villages absolutely according to the terms of the aforesaid permanent lease deeds." F then applied by petition dated the 13th March 1890 to the Collector for separate registration and assessment of the said village, but on notices being sent to the zamindar and the lessees they filed objections which after due enquiry, were overruled by the Collector, who ordered separate

cancelled both the separate registration and the se

with interest alleged to be due on the said village for Fash 1300. Held that F was bound to pay the lessees Rs 500 porappu with mangamai and road cess,

MADRAS LAND REVENUE ASSESSMENT ACT (MADRAS ACT I OF 1876)

—continued

whether his village was separately registered and assessed or not. Held that the suit by F for a declaration that the order of the Madras Government directing the Collector to cancel the separate registration and assessment of the village previously made by him was illegal and *ultra vires* could not be maintained with reference to s 42, Specific Relief Act, inasmuch as the order had been already carried out. Held also that if the general words of the prayer "for such other relief as the circumstances of the case may require" were to be taken as including a prayer for consequential relief when the suit was bad for misjoinder inasmuch as the zamindar and the lessees who were interested parties were not joined. Held also that not only the person applying under Act I of 1876 s 2 for separate assessment and registration must be entitled thereto but also that the parties to the alienation must concur in the application. FISHER v SECRETARY OF STATE FOR INDIA IN COUNCIL. OUR v FISHER.

[I L R, 19 Mad, 292]

Held by the Privy Council reversing the above decision. By the effect of ss 5 and 6 of the Madras Act I of 1876 the decision of the Collector in a case within his jurisdiction whether for or against separate registration of a portion alienated from a zamindar, when once duly sanctioned as provided by that Act can only be questioned in a Civil Court. Under ss 7 and 8 the apportionment of the assessment may be appealed from the Collector to the Board of Revenue.

for which he had sued would be sufficient to

of the revenue upon separate registration and separate assessment of the village. This involved the construction of terms in the documents entitling the grantee to the village, and these, according to the plaintiffs, obliged him to pay a fixed sum to the zamindar. Held that he was only liable, after the registration and assessment, for arrears lawfully incident to the separate holding, and that they were to be

MADRAS HARBOUR TRUST ACT (MADRAS ACT II OF 1886)—concluded.

away and the sea to be let in to the plaintiff's premises, thus causing the damage complained of, which defendants had taken no steps to prevent. *Held per SHEPARD, J.*, that the plaintiff must be deemed to have commenced the suit in due time, since it was owing to the act of the Court itself that he was prevented from presenting his plaint till the day upon which it was filed. Also that the notice was sufficient, and that on the facts of the case s. 87 had no application. *Semble*—That, though a special rule of limitation was prescribed by the Act, s. 5 of the Limitation Act applied. *Per O'FARRELL, J.*—That the last clause of s. 87, which provides that neither the Board nor any of its officers or servants shall be liable in damages for any act *bona fide* done or ordered to be done in pursuance of the Act, had no reference to the present case. That section applied only to cases of acts done without legal authority or in excess of legal authority, but under the *bona fide* belief that they were covered by such authority. *Per BODDAM, J.*—That the cases in which it has been held that no action lies for non-feasance apply only to highways and have no application to the present case. *Per DAVIES, J.*—The liability of the trustees, in the absence of any statutory duty cast upon them to insure plaintiff from loss, was confined to the maintenance of the particular work they took over, and, if there was any general obligation to protect the plaintiff's property, it lay on the Government, who constructed the harbour, the Legislature not having imposed it on the trustees. *ISMAIL SAIT v. TRUSTEES OF THE HARBOUR, MADRAS*

[I. L. R., 23 Mad., 389]

MADRAS HEREDITARY VILLAGE OFFICES ACT (MADRAS ACT III OF 1895).

s. 5—*Attachment of growing crop.*—By s. 5 of the Madras Hereditary Village Offices Act, the emoluments of village offices are not to be liable to attachment. *Held* that an attachment by a decree-holder of a crop growing on certain lands in a zamindari, which were the inam service lands held by the judgment-debtor as a village servant, had been rightly set aside. *KANNAM NAIDU v. LATCHANNA DHORA*

I. L. R., 23 Mad., 492

s. 21.

See MADRAS REVENUE RECOVERY ACT, s. 52. I. L. R., 23 Mad., 571

MADRAS IRRIGATION CESS ACT (MADRAS ACT VII OF 1865).

See MADRAS RENT RECOVERY ACT, s. 4.
[I. L. R., 7 Mad., 182]

1. — s. 1—*Water-cess—Overflow from Government works—Water supplied or used for purposes of irrigation.*—Surplus water from Government irrigation works flowed on to land of the plaintiff which they were in the habit of cultivating with dry crops and stagnated there rendering such cultivation impossible. The plaintiffs did not want the

MADRAS IRRIGATION CESS ACT (MADRAS ACT VII OF 1865)—concluded.

water to flow on to their land, but, being unable to exclude it, planted paddy as the best crop to cultivate under the above circumstances. Water-cess was levied on the plaintiffs under colour of Act VII of 1865. *Held* the water was not supplied or used for purposes of irrigation within the meaning of Act VII of 1865, s. 1, and the plaintiffs were not liable to pay the water-cess. *VENKATAPPAYYA v. COLLECTOR OF KISTNA*

I. L. R., 12 Mad., 407

2. — *Lands irrigated under Kistna aicut—Water-cess—Optional or compulsory use of water.*—A raiyat occupying land in the Kistna delta made no application for the supply of water, but water from the irrigation channels flowed from time to time on to his land from irrigated lands of a higher level, and he had no option as to whether to accept or refuse the supply. No increased benefit was derived from the water by the raiyat. A sum having been levied from him on account of water-cess, he now sued to recover the amount. *Held* that the plaintiff was entitled to recover. *Venkatappayya v. Collector of Kistna, I. L. R., 12 Mad., 407, followed. KRISHNAYYA v. SECRETARY OF STATE FOR INDIA*

I. L. R., 19 Mad., 24

s. 4.

See MADRAS RENT RECOVERY ACT, s. 11.
[I. L. R., 15 Mad., 47]

MADRAS LAND REVENUE ASSESS- MENT ACT (MADRAS ACT I OF 1876).

1. — s. 2—*Separated registration and assessment of revenue—Suit for declaratory decree—Consequential relief—Specific Relief Act, s. 42—Misjoinder of parties—Madras Regulation XXV of 1802, s. 8—Want of concurrence of parties in applying.*—A suit was brought by F against the Secretary of State for India in Council for a declaration that the order of the Madras Government directing the Collector to cancel the separate registration and assessment of a village in the Sivagunga zamindari in his name was, *ultra vires* and illegal. The plaintiff's claim to be separately registered as the holder of the said village depended upon the proper construction to be put on grant of the village contained in two documents, the one dated the 13th December 1872 and the other being a document dated the 14th May 1877, executed by the Rani and her children. Subsequently to the grant referred to, an application was preferred by the Rani and addressed to the Collector requesting him to separately assess the village and register it in the name of F. This application was never presented owing to the death of the Rani, who was succeeded by the father of the present zamindar, who executed, on the 22nd February 1883, a deed of release in favour of F ratifying the grant abovementioned in the following terms: "Whereas the village of Kondagai . . . of my zamindari . . . has been granted to you in perpetuity by the late Rani Kattama Nachiyar and others and has been in your possession according to the terms of the documents executed by them to you

MADRAS LOCAL BOARDS ACT (MADRAS ACT V OF 1884)—*concluded*

words "Government stores and equipages" in cl 3 s 87, Act V of 1884 and are free from tolls under that Act. **QUEEN EXPRESS : KUTTIAM**

[I L R, 20 Mad, 18

ss 98 and 100

See **PNAL CODE**, s 188.

[I L R, 20 Mad, 1

s 128 and s 158—*Suit for malicious prosecution against officers of Panchayat Union—Limitation*—A suit was brought against the Chair man and accountant of a Panchayat Union for damages for malicious prosecution more than six months after the close of the criminal proceedings and it was contended for the defendants that the

was not confined to his remedy against the Taluk Board (2) that the Local Pounds Act s 106 was not applicable unless it were proved that the Act complained of was done by servants of the Taluk Board within the scope of their authority as such acting or purporting to act under the Act. **ANNAI & SUBRAMANYA**

I L R, 13 Mad, 442

MADRAS LOCAL FUNDS ACT (MADRAS ACT IV OF 1871)

Tolls where leviable—Under the Local Funds Act (Madras Act IV of 1871) tolls are only leviable at toll bars and tolls are not leviable on

a road available to the public. **GOVINDARAJULU & LAKSHMANAY**

I L R, 6 Mad, 37

MADRAS MUNICIPAL ACT (MADRAS ACT IX OF 1887)

s 142—*resident of Municipality*

MISSIONERS FOR TOWN OF MADRAS 8 Mad, 151

MADRAS MUNICIPAL ACT (MADRAS ACT V OF 1878)

ss 103, 105, sch A, class I—

offer
the
y of
with

tax a half yearly liability is incurred in respect thereof by the tax payer **W**, having been assessed

MADRAS MUNICIPAL ACT (MADRAS ACT V OF 1878)—*continued*

under class I, sch A of Act V of 1878 Madras, to

of that Act at Rs 125, being a moiety of the yearly tax on the same class. *Held* that the assessment was legal. **WILSON & PRESIDENT, MUNICIPAL COMMISSION MADRAS**

I L R, 8 Mad, 429

1. s 119—*Place of public worship*
Feeding Brahmans—A building used in whole or in part for purposes other than those of public worship is not exempt from taxation under s 119 of the City of Madras Municipal Act 1878. The feeding of Brahmans is not an act of public worship within the meaning of that section. **THAMBU CHETTI SUBRAYA CHETTI & ARUNDEL**

[I L R, 6 Mad, 287

2. and ss 120 123—*Waste land—Tax*—S 123 of the City of Madras Municipal Act 1878 which defines the annual value of a house building or land for the purpose of taxation under the Act has no reference to the alternative given to the President by s 120 to levy a fixed annual tax (not exceeding Rs 4 per ground) on lands unappropriated to any building or occupied by native huts with their appurtenances. **AHMED UNNISA BEGAM SAHIDA & ARUNDEL**

I L R, 7 Mad, 63

s 123—*Tax on buildings* *Hospital built by Government*—Standard of hypothetical rent—Under s 123 of the City of Madras Municipal Act the gross annual rent at which a building might reasonably be expected to let from month to month or from year to year is for the purpose of assessment to house tax under the Act to be deemed to be the annual value of such building. The Lying-in Hospital in Madras built and supported by Government having been assessed by the President of

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was correct. **SECRETARY OF STATE & MADRAS MUNICIPALITY**

I L R, 10 Mad, 33

MADRAS LAND REVENUE ASSESSMENT ACT (MADRAS ACT I OF 1876)
—concluded.

discharged by direct payment by him to the Collector.
FISCHER v. SECRETARY OF STATE FOR INDIA. ORR
v. FISCHER . I. L. R., 22 Mad., 570

[L. R., 28 I. A., 18
3 C. W. N., 161]

2. — ss. 2 and 6.—*Suit for declaration of right to separate registration and assessment—Madras Regulation XXV of 1802, s. 8—Want of concurrence of parties in suit.*—An alien of a portion of a Zamindari is entitled to separate registration and assessment under Madras Act I of 1876. A Court has power to order separate registration and assessment under s. 6, although all the parties concerned do not concur in applying within the meaning of s. 2. *KAMALAMMAL v. RAJU NAICKER*
[I. L. R., 19 Mad., 308]

— s. 6.—*Madras Regulation XXV of 1802, s. 9—Madras Regulation XXVI of 1802, s. 2.*—An application to a Collector to grant separate registration of a portion of a permanently-settled estate which has been alienated by a Court sale is one under the provisions of Regulations XXV and XXVI of 1802, and not under Act I of 1876. *BOMMARAZU v. SESHANMIA* . I. L. R., 22 Mad., 438

MADRAS LOCAL BOARDS ACT (MADRAS ACT V OF 1884).

1. — s. 27 and ss. 128, 156.—*Suit against Taluk Board—Suit framed erroneously—Plaint, Frame of—Compensation for wrongful acts committed under the Act—Special period of limitation.*—In a suit brought against, among others, the President of a Taluk Board constituted under Local Boards Act, 1884 (Madras), to recover land on which the panchayat of a Union within the taluk had erected a public latrine, it was pleaded that the suit, as against the above-mentioned defendant, was wrongly framed, and also that it was barred by the special rule of limitation contained in s. 156 of that Act. The plaintiff asked for no amendment, but proceeded to trial. *Held* that the suit was not maintainable under the Madras Local Boards Act, 1884, s. 27, on the ground that it was not brought against the Taluk Board. *Quære*—Whether s. 156 is applicable to suits other than suits for compensation for wrongful acts committed under colour of the Act. *AMEER SAHIB v. VENKATARAMA* . I. L. R., 16 Mad., 298

2. — and s. 156.—*Notice of action—Form of suit—Plaint, Frame of—Injunction against Taluk Board.*—The plaintiff built a wall on his land situate within the limits of the Sivaganga Taluk Board. The Local Board called upon him to remove the wall as constituting an obstruction, and gave him notice that in default of his doing so it would be demolished by the authorities. The plaintiff now brought a suit against the President of the Taluk Board and the Chairman of the Union, within the limits of which the land was situated, for an injunction restraining the defendants from interfering with the wall. No notice of action was given under the Local Boards Act, s. 156. In

MADRAS LOCAL BOARDS ACT (MADRAS ACT V OF 1884)—continued.

the Courts of first instance and first appeal no objection was taken to the frame of the suit with reference to the provisions of s. 27. *Held* (1) that the defendants should not be permitted on second appeal to raise such objection to the frame of the suit; (2) that previous notice of action under s. 156 was not necessary. *PRESIDENT, TALUKH BOARD, SIVAGANGA v. NARAYANAN*
[I. L. R., 16 Mad., 317]

— s. 43.—*Public servant—Sanitary Inspector.*—A Sanitary Inspector appointed by the Local Board is a public servant within the meaning of Local Boards Act, Madras, 1884, s. 43. *QUEEN-EMPRESS v. TIRUVENGADA MUDALI*
[I. L. R., 21 Mad., 428]

— ss. 64, 73.—*Tax payable on land—Favourable tenure—Claims by landholder of more than one-half of the tax from tenant—Invalidity of custom for tenant to pay whole tax.*—A tenant paid an annual rent of R64 to the landholder, the tenure being of a nature dealt with by sub-s. (iii) of s. 64 of the Local Boards Act (Madras), 1884. The landholder distrained on the tenant's property in respect of the whole amount of local cess payable in respect of the land, contending that it should be calculated on the rent value, which was admittedly R710. It was found that under a custom subsisting in the district the whole amount of the local cess was payable by the tenant. *Held* that, having regard to s. 73 of the said Act, such a custom must be unreasonable and invalid. The words "favourable rent" in s. 64, sub-s. (iii), of the Act mean rent which, at the time of the assessment being fixed, is favourable as compared with the ordinary rent of similar lands in the vicinity, and has nothing to do with the question whether the rent, as fixed at the time when the lease was granted, was favourable or unfavourable. *BRUPATIRAZU v. RAMASAMI* . I. L. R., 23 Mad., 268.

— ss. 77, 78, 81, 94, 183.—*Penal Code (Act XLV of 1860), ss. 99, 186, 353—Service of notice of demand of house-tax—Omission to fill up the house-register completely—Illegal distraint—Resistance to distraining officer.*—A notice of demand of a house-tax under the Madras Local Boards Act (Madras Act V of 1884) was affixed to the house. The owner, who was a potter and cultivator by occupation, was in the village at the time. He did not pay the tax. A warrant of distress was issued, the house-register not having been completely filled up, and a bucket and spade belonging to the defaulter were attached. The defaulter successfully resisted the distraint. *Held* that the provisions of the Act had been sufficiently complied with as regards the preliminary steps for making the demand and the service of notice, and the fact that the spade and the bucket were protected from attachment under s. 94 did not justify the resistance, and accordingly that the defaulter was guilty of offences under Penal Code, ss. 186 and 353. *QUEEN-EMPRESS v. POOMALAI UDAYAN* . I. L. R., 21 Mad., 298.

— s. 87, cl. 3.—*Government stores and equipages—Non-liability to tolls.*—Stores and carts belonging to the Government jails come within the

MADRAS MUNICIPAL ACT (MADRAS ACT I OF 1884)—continued

was not liable to pay any tax as agent etc but the

the appellant to be taxed under s 103, (2) that although the absent partner might be called upon through the appellant as his agent to pay the tax due by the firm with reference to its whole income, he was not otherwise chargeable with any tax in respect of the business carried on by him. **DAVIES v. PRESIDENT OF THE MADRAS MUNICIPAL COMMISSION**. I. L. R., 14 Mad., 140

4 ——— and sch. A, class 1 (A) (B)—*Exercise of calling—Investment of funds of society—Benefit Society*—The business of investing the funds of a society for interest is a calling within the meaning of s 103 of the Madras Municipal Act, 1884. A society established to provide by the subscriptions of its members for pensions for their widows and children is a benefit society within the meaning of sch. A, class 1 (A) of the said Act. Where the context discloses a manifest inaccuracy the sound rule of construction is to eliminate the inaccuracy and to execute the true intention of the Legislature. **JENNINGS v. PRESIDENT, MUNICIPAL COMMISSION, MADRAS**. I. L. R., 11 Mad., 253

— s 307—*Prohibition against depositing stable refuse in a street—Deposit of stable*

any of the said matters or any building, stable or garden refuse in any street, pavement or verandah of

an offence under the said section. **PERUMAL v. MUNICIPAL COMMISSIONERS FOR THE CITY OF MADRAS**. I. L. R., 23 Mad., 184

MADRAS MUNICIPAL ACT (MADRAS ACT I OF 1884)—concluded

that at the close of a correspondence between the plaintiff and the President of the Municipality the plaintiff, in a letter headed "Madras" stated that he had directed auctioneers to sell the horses and that he would proceed against you by law to recover such

[I. L. R., 14 Mad., 388]

2 ——— *Notice of action*—In a suit against the President of the Municipal Commission, Madras to recover damages for the demolition of a house which had been built by the plaintiff without

an action would be brought. *Held* that the latter was not a sufficient notice of action. **DEVALJI RAU v. PRESIDENT MUNICIPAL COMMISSION MADRAS**

[I. L. R., 18 Mad., 503]

— sch. A—*Liability of Mutual Assurance Company to taxation*—The investment for interest of the funds of a Mutual Insurance Company by its Directors constitutes carrying on business for gain and the premia paid by insurers and the

PRESIDENT, MUNICIPAL COMMISSION MADRAS. [I. L. R., 11 Mad., 238]

City of Madras Municipal Act 1884 WILSON v. **MADRAS MUNICIPALITY**. I. L. R., 19 Mad., 83

MADRAS POLICE ACT (MADRAS ACT XXIV OF 1859)

— ss 10 and 44—*Departmental punishment and prosecution under the Act*—In the absence of any rules framed by Government under s. 10 of the Madras Police Act, a departmental

MADRAS MUNICIPAL ACT (MADRAS ACT V OF 1878)—continued.

s. 192, Case referred under—*Right of Municipal Commissioners to levy water-tax—Condition precedent—Independent power—Construction of statutes.*—The Madras Municipal Act is not a "private" Act. When a public body is entrusted by the Legislature with the duty of making public improvements, and powers are entrusted to it for such purpose, those powers will not be subject to a restrictive construction, though they interfere with private rights. A statute is not to be construed like a contract. The power to impose a tax is not contractual and needs no correlative right. An equitable construction is not permissible in a taxing statute where it is possible to adhere to the words of the statute. *B* resided within the City of Madras and occupied premises within a division or district of the city in which no water had been introduced by the Municipal Commissioners. The Commissioners levied a water-tax on *B* in respect of his premises. *B* appealed under s. 189 to the President and two Commissioners, who decided that he was liable to pay the tax. On a case stated to the High Court it was held by INNES, J., and MUTTUSAMI AYYAR, J. (KERNAN, J., dissenting), that upon the true construction of the Act (V of 1878) the right of the Commissioners to levy the water-tax was independent of the duty imposed upon the Commissioners to supply water. BRANSON v. MUNICIPAL COMMISSIONERS, MADRAS

[I. L. R., 2 Mad., 382]

ss. 317, 318—*President of Municipal Commissioners—Discretion as to necessity of cleansing tank likely to prove injurious to health.*—By s. 317 of the City of Madras Municipal Act, 1878, the President of the Municipal Commissioners was invested with a discretion as to the necessity of cleansing and filling up tanks and wells and draining off stagnant water likely to prove injurious to the health of the neighbourhood, and by s. 318 was empowered, on neglect of the owner to comply with a requisition to do the necessary work, to get the work done and to recover the costs in the manner provided for the collection of taxes. No appeal was allowed by the Act against the President's decision. Held, in a suit by the Municipal Commissioners to recover from the defendants the cost of draining and cleansing a tank, that it was not open to the defendants to prove that the tank was not likely to prove injurious to the health of the neighbourhood. MUNICIPAL COMMISSIONERS FOR THE CITY OF MADRAS v. PARTHASARADI . . . I. L. R., 11 Mad., 341

s. 433—*Water rate—Liability of Commissioners to a suit for compensation for not supplying water and collecting rate.*—By the provisions of the City of Madras Municipal Act, 1878, if a water rate is levied by the Commissioners, they are bound to supply water for house service to every rate-payer who desires and provides the necessary works to connect his premises with the main, which ought to be within 150 yards of his premises, and the rate-payers are bound to pay water-rate whether or not they avail themselves of the privilege of house service. If the Commissioners do not perform this duty, the rate-payer has a remedy by action and may recover

MADRAS MUNICIPAL ACT (MADRAS ACT V OF 1878)—concluded.

compensation, either under the provisions of s. 433 (which provides that a person aggrieved by the failure of the Commissioners to do their duty may bring his action, and the Court may either direct the duty to be performed "or make such order as to the Court may seem fit") or under those of the Statute of Westminster. *Semble*—If the Court does not order the execution of the works under s. 433, the only other order it could make would be an order for reasonable compensation. The Legislature intended the water rate to be a payment for a benefit conferred, and the tax should not be levied till water can be supplied. If in part of the city the Commissioners are able to supply water and desire to obtain at once a return for their works, they should apply to the Government to exempt the rest of the city from the operation of the Act. MUNICIPAL COMMISSIONERS, MADRAS v. BRANSON . . . I. L. R., 3 Mad., 201

MADRAS MUNICIPAL ACT (MADRAS ACT I OF 1884).

1. — s. 103 and s. 110—*Profession tax—Liability of member of a firm to pay separate tax in respect of a Government appointment, his qualification for such appointment (Government Solicitor) being the profession which he also carries on jointly with the firm—Meaning of "person" under the Act.*—A member of a firm of Attorneys-at-Law and Notaries Public, which paid the profession tax leviable under s. 103 of the City of Madras Municipal Act, 1884, also held the appointment of Government Solicitor. He practised no other profession or business than that exercised by his firm; and the duties of Government Solicitor could not be performed by any person other than a practising attorney. The Municipality of Madras having demanded profession tax in respect of the appointment of Government Solicitor in addition to the tax paid by the firm of which the holder of the appointment was a member, — Held that the tax was rightly levied. BARTLEY v. PRESIDENT, MUNICIPAL COMMISSION, MADRAS

[I. L. R., 23 Mad., 529]

2. — and s. 190—*Profession tax—Inspector-General of Police.*—The Inspector-General of Police, whose official place of business with the main body of clerks is in Madras, went on tour, and during his absence the Assistant Inspector-General in Madras signed letters for him. Held that the Inspector-General was not assessable to profession tax under the City of Madras Municipal Act in respect of the period when he was absent on tour. HAMMOND v. PRESIDENT, MADRAS MUNICIPAL COMMISSION

[I. L. R., 22 Mad., 145]

See CHAIRMAN, ONGOLE MUNICIPALITY

[I. L. R., 17 Mad., 453]

3. — and ss. 190, 192—*Profession tax—Liability of members of a firm—Extent of jurisdiction of—*A member of a firm in Madras, another member of which was absent, was assessed under the Madras Municipality Act to pay a certain sum for the tax on arts,

**MADRAS POLICE ACT (MADRAS ACT
III OF 1888)—concluded**- s 71, cl 11 and 15—*Crowd collected*

viction under cl 11 was right where the accused played and sang was a private place, but that if it was a private place the conviction under cl 15 was wrong. *QUEEN EMPRESS v SUGA SINGH* 1 L R, 14 Mad, 223

MADRAS REGULATION—1802—II

See CASES UNDER LIMITATION—STATUTES
OF LIMITATION—MADRAS REGULATION
II OF 1802

See LIMITATION ACT 1877 ART 149
[1 L R, 9 Mad, 175

- s 17

See ENGLISH LAW—EQUITABLE MORT
GAGE 9 Moore s L A, 303

- s 18

See LIMITATION ACT 1877 ART 144—AD
VERSE POSSESSION
[1 L R, 13 Mad, 467

- III, s 8

See OATH 4 Mad, Ap 3

See OATHS ACT 183 s 11
[1 L R, 2 Mad, 358

- XVII, s 3

See REGISTRATION—MADRAS REGULATION
XVII OF 1802 2 Mad, 108

- XXV

See COLLECTOR 3 Mad, 35

See GRANT—CONSTRUCTION OF GRANTS
[1 L R, 9 Mad, 307
L R 13 I A 32
1 L R, 2 Mad, 234

See HINDU LAW—INHERITANCE—IM
PARTIBLE PROPERTY

[1 L R, 13 Mad, 408
L R, 17 I A, 134

See JURISDICTION OF CIVIL COURT—RE
GISTRATION OF TENURES 3 Mad, 35

See MADRAS RENT RECOVERY ACT 1805
s 1 1 L R, 8 Mad, 351

See TAX 1 L R, 9 Mad, 14

1. Mad Reg XXXI of
1802 Rights of zamindars under—Proprietary pos
session—Construction of statute—Preamble—The

**MADRAS REGULATION—1802—XXV
—continued**

erty and does not assert a right on the part of
Government to dep e or dispossess zamindars i
t e m e r r s after their deaths i

the payment of revenue OOLAGAPPA CHETTY v
ARUTHNOT COLLECTOR OF TRICHINGOPOLY s
LEKHAMANI PEDDA AMANI : ZAMINDAR OF MA
RUNGAPORH 14 B L R 115 21 W R, 358
[L R, 11 A, 268, 283

- Alienation by amiss

a defendant pleaded that he had n a tue p i

the claimant was the grantee of the
as to property of a normal character the statute
would have been to run KRISHNA DEVI GARU
v RAMACHANDRA DEVI MAHARAJULU GARU
[3 Mad, 153

3 Settlement—Mutual
in settlement papers—Grant by zamindar before
Permanent Settlement—Tenants are not concluded

MADRAS POLICE ACT (MADRAS ACT XXIV OF 1859)—continued.

punishment inflicted under that section is no bar to a prosecution under s. 14 of that Act. *QUEEN-EMPERESS v. FAKRUDEEN* . . . I. L. R., 17 Mad., 278

ss. 31 and 40—*Procession likely to cause breach of the peace—Powers of police—Removal of banners from persons in the procession—Trespass.*—A procession of Hindus carried certain banners, and the Superintendent of Police was of opinion that a breach of the peace would be occasioned if those banners continued to be displayed, and in good faith, for the purpose of preventing such breach of the peace, he took away the banners from certain persons in the procession. *Held* that the action of the Superintendent of Police was not justified by the Madras Police Act, 1859, ss. 21 and 40, and that he was accordingly liable for the trespass. *RANGANATHAR v. PRENNBERGAST*

[I. L. R., 17 Mad., 37]

— s. 41.

See REVISION—CRIMINAL CASES—EVIDENCE AND WITNESSES.

[6 Mad., Ap., 45]

1. ——— and s. 10—*Sentry going to sleep on duty—Ceasing to perform duties.*—Accused, a police constable, was convicted under s. 14 of Act XXIV of 1859 of ceasing to perform the duties of his office. The evidence showed that he had gone to sleep while posted as a sentry over the jail. *Held* that the accused was not guilty of the particular species of offence of which he was convicted; he was, however, guilty *prima facie* under the section. Going to sleep while on guard is an offence punishable under s. 10. *ANONYMOUS*

[6 Mad., Ap., 31]

2. ——— *Sentry going to sleep on duty.*—Accused, a police constable, was on duty at the outer gate of a central jail. Quitting his post beside the gateway and leaving the gate open, he went to sleep outside. For this violation of duty he was convicted and sentenced under s. 44 of Act XXXIV of 1859. *Held* that the conviction was legal. *ANONYMOUS* . . . 7 Mad., Ap., 7

3. ——— and ss. 8, 10, 11—*Village kavalgars.*—S. 14 of Act XXIV of 1859 applies only to police officers enrolled and appointed in the manner prescribed in ss. 8, 10, and 11 of the Act. Village kavalgars, not being so appointed, are not punishable under s. 14. *ANONYMOUS*

[7 Mad., Ap., 4]

— s. 43.

See BENCH OF MAGISTRATES.

[I. L. R., 13 Mad., 142]

See FINE . . . 3 Mad., Ap., 9

See JURISDICTION OF CRIMINAL COURT—EUROPEAN BRITISH SUBJECTS.

[5 Mad., Ap., 25]

See MAGISTRATE, JURISDICTION OF—TRANSFER OF MAGISTRATE DURING TRIAL I. L. R., 15 Mad., 132

MADRAS POLICE ACT (MADRAS ACT XXIV OF 1859)—concluded.

See SENTENCE—IMPRISONMENT—IMPRISONMENT GENERALLY 5 Mad., Ap., 35

See SENTENCE—IMPRISONMENT—IMPRISONMENT AND FINE 7 Mad., Ap., 22 [3 Mad., Ap., 9]

1. ——— *Spreading fishing-nets by the side of public thoroughfare.*—To spread fishing-nets by the side of a thoroughfare in a town is not an offence punishable under cl. 3, s. 48 of Act XXIV of 1859. *QUEEN v. KHADER MOIDIN*

[I. L. R., 4 Mad., 235]

2. ——— *Power of Local Government to define "town."*—There is no Act of Legislature which empowers either the District Magistrate or the Local Government to define a "town" for the purpose of s. 48, Act XXIV of 1859. *ANONYMOUS*

[6 Mad., Ap., 34]

3. ——— *Reckless riding in streets—Riding untrained bullock.*—Accused was convicted under cl. 1, s. 18 of the Police Act, XXIV of 1859. The facts found were that he rode an untrained bullock, which he could not control, in the public street. *Held* that the evidence warranted the conviction. *ANONYMOUS* . . . 7 Mad., Ap., 10

4. ——— *Madras Act I of 1855—Dung-heap kept in a town.*—By cl. 5 of s. 48 of Act XXIV of 1859 (Madras), as amended by Act I of 1855 (Madras), any person who, within the limits of a town, "throws or lays down any dirt, filth, rubbish or any stones or building materials; or who constructs a cow-shed or stable without the bounds of any thoroughfare, or who causes any offensive matter to run from any dung-heap into the street" is punishable. A was convicted and fined for having kept a manure-heap in a town, but not in a street. *Held* that the conviction was bad. *QUEEN-EMPERESS v. APPATHORAY* . . . I. L. R., 9 Mad., 167

— s. 50.

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—MADRAS ACT III OF 1865. [4 Mad., Ap., 54]

— s. 53.

See ESTOPPEL—ESTOPPEL BY CONDUCT. [5 Mad., 466]

See RIGHT OF SUIT—MONEY HAD AND RECEIVED . . . 5 Mad., 466

MADRAS POLICE ACT (MADRAS ACT III OF 1888).

— ss. 42, 45, and 47—*Seizure of articles used for purpose of gaming.*—In the Madras City Police Act III of 1888, s. 47, the words "all or any of the other articles seized" include money or securities for money seized by the police under s. 42. The Magistrate is not bound to hold any inquiry as to whether the money and other things seized were used or intended to be used for the purpose of gaming. *QUEEN-EMPERESS v. BHASHYAM CHETTI*

[I. L. R., 19 Mad., 209]

MADRAS REGULATION—1802—XXV

—concluded.

one under the provisions of Regulations XXV and XXVI of 1802, and not under Act I of 1876
BOMMARAZU v SESHAMMA I. L. R., 22 Mad., 438

s. 11.

See KARNAM . I. L. R., 20 Mad., 145

See MUNSIF, JURISDICTION OF.
[I. L. R., 12 Mad., 188

Srotiyamdar—*Suit to dismiss karnam*—Under Regulation XXV of 1802, a srotiyamdar cannot sue for the dismissal of the karnam of his village. THURGA RAMACHANDRA NAU v APPARTA . . . I. L. R., 7 Mad., 129

s. 12.

See SALE FOR ARREARS OF REVENUE—PURCHASERS, RIGHTS AND LIABILITIES OF . . . I. L. R., 13 Mad., 479

XXVI

See POSSESSION—ADVERSE POSSESSION
[I. L. R., 20 Mad., 6

XXVII

See RESUMPTION—EFFECT OF RESUMPTION . . . 3 Mad., 59

XXVIII

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—RENT . . . 2 Mad., 22

XXIX—Karnam—Incapacity

MADRAS REGULATION—1802—XXIX

—continued.

1. ————— “Heirs,” Meaning of—The word “heirs” in s 7 of Madras Regulation XXIX of 1802 means “persons who, in the event of death, would inherit from the preceding incumbent” ARUMUGAM PILLAI v. VIJAYAMMAL [I. L. R., 4 Mad., 338

2

ceding
ceding
1802
success
heirs in the order of succession to undivided divisible ancestral property KRISHNAMMA v PAPA [4 Mad., 234

3. ————— The office of karnam in a zamindari village having been held by three brothers jointly in hereditary rights, the zamindar, on the death of one brother, did not fill up the vacancy, considering that the work could be well conducted by the two survivors. On the death of the survivors their sons succeeded to the office. The zamindar, subsequently desiring to reapportion a third karnam nominated an outsider to the joint tenancy of the office. Held that, as there were heirs of the last holders in existence the appointment was invalid VENKATTA v SUBBARAYUDU [I. L. R., 9 Mad., 293

4. ————— Office of karnam in a zamindari village Succession to—Female claim—

nam (from whom he was divided) sued to establish his right to the office of karnam. Held (1) that a woman cannot hold the office of karnam. Held further (2) that, when the immediate heir is incapacitated, the nearest male sapinda of the deceased karnam is entitled to succeed to the office CHANDRAMMA v VENKATRAJU I. L. R., 10 Mad., 226

5. ————— Karnam in zamindari village—Title to office—The holder of a karnam's office in a zamindari village, being incapacitated resigned the office in 1863, leaving a minor son, the plaintiff. The brother of the late holder was then appointed to the office, and held it till 1877, when he died. Plaintiff was then nominated by the

was the lawful holder of the office SUBBARAYUDU v GANDARAJU . . . I. L. R., 11 Mad., 196

6.

Zamindari karnam—Order of succession to hereditary office—Hindu law—Inheritance—A woman who had been appointed to succeed her husband, the holder of the hereditary office of karnam in a zamindari, died leaving the defendant, her daughter's son, and the plaintiff, the son of her late husband's paternal uncle. Held that the defendant was entitled to

the heir, was valid VENKATANARAYANA v SUBBARAYUDU . . . I. L. R., 9 Mad., 214

s. 5

See KARNAM . I. L. R., 20 Mad., 145

ss 5, 7, 10, 16, 18

See MUNSIF, JURISDICTION OF
[I. L. R., 12 Mad., 188

s. 7.

See MUNSIF, JURISDICTION OF
[I. L. R., 22 Mad., 340

that in filling the office of karnam the heirs of the preceding karnam shall be chosen by the landholders, except in cases of incapacity, on proof of which before the Judge of the zillah the landholders shall be free to exercise their discretion in the nomi-

MADRAS REGULATION-1802-XXV

—continued.

by a mistake in settlement papers, nor does Regulation XXV of 1802 provide for forfeiture of rights by parties who by carelessness or accident allow their land to be misdescribed in settlement proceedings. It was doubted whether grants made by a zamindar before the Permanent Settlement were, or were not, binding on his successors,—their Lordships' minds inclining strongly to the affirmative side of the alternative, but as the question was not raised in the Courts below, it was not considered to be open to the appellants in the appeal to the Privy Council. *VRICHIERLA RAZI AHADOOR v. NADMINTI BAGAVAT SASTRI* [25 W. R., P. C., 3

4. ———— *Alienation of proprietary rights.*—Regulation XXV of 1802 strictly restrains the alienations of proprietary rights except in manner therein provided, and invalidates a disposal or transfer of such rights as against the Government and the heirs and successors of the proprietor making the disposal or transfer. *Semble*—Such alienation would be valid against the proprietor himself. A permanent lease is as much within the operation of Regulations XXV and XXX of 1802 as an absolute transfer by gift or sale. *SUBBARAYALU NAYAK v. RAMA REDDI* 1 Mad., 141

ss. 4, 12—*Zamindar's sanad, Assets mentioned in—Quit-rent on an agharam village—Inam title-deed, Rate mentioned in—Joint liability of agharamdars—Rent, Rate of.*—The plaintiff was a zamindar holding his estate under a sanad dated 1802. This sanad followed almost verbatim the language of Regulation XXV of 1802, s. 4, and where it referred to "lands paying a small quit-rent," added "which quit-rent unchangeable by you is included in the assets of your zamindari." The suit was brought to recover arrears of jodi or quit-rent accrued due on an agharam village in the zamindari. The defendants, who were the agharamdars, had divided the village and held it in separate shares. They pleaded that they were not liable to pay jodi in excess of the rate fixed by the Inam Commissioner and specified in the inam title-deed granted by him for the village in 1869. *Held* (1) that the decision of the Inam Commissioner did not affect the zamindar's claim, and that the question to be determined was what was the jodi payable in respect of the village at the time of the permanent settlement on which the peishush of the zamindari was fixed; (2) that the defendants were jointly and severally liable for the amount that should be found due to the zamindar. On its appearing that R6 per patti was the recognized rate from 1832 to 1879, and that there was no evidence to show the agharamdars had ever paid any other rate, or had paid R6 under coercion, the Court presumed that that was the rate at the time of the Permanent Settlement. *SOBHANADRI APPA RAU v. GOPALKRISHNAIYAN* [I. L. R., 16 Mad., 34

s. 8.

See KARNAM . I. L. R., 20 Mad., 145.

MADRAS REGULATION-1802-XXV

—continued.

See MADRAS LAND REVENUE ASSESSMENT ACT . I. L. R., 19 Mad., 292, 308.
[I. L. R., 22 Mad., 270
L. R., 26 I. A., 16

1. ———— *Perpetual lease—Transfer.*—A perpetual lease of a distinct portion of a zamindari is not a transfer within the meaning of s. 8, Regulation XXV of 1802, Madras Code. *VENKATASWARA NAICKER v. ALAGOOMOOTTOO SERVAGAN* . 4 W. R., P. C., 73 : 8 Moore's I. A., 327

2. ———— *Alienation by zamindar—Limitation.*—Where a zamindar alienated a part of the zamindari, and the terms of the Regulation XXV of 1802, s. 8, were complied with, —*Held* (HOLLOWAY, J., dissentiente) that the alienation was invalid against the plaintiff, the grandson of the zamindar. *Held* also by the whole Court that the defendant and his father having held the land for a lengthened period on a claim of right, the plaintiff's suit was barred by the Statute of Limitations. *ALI SAIB v. SANYASIBAZ PEDDABALIYARA SIMHULU* 3 Mad., 5

See SETA RAMA KRISTNA RAYUDAPPA RANGA RAO v. JAGUNTI SITAYAMMA GARU . 3 Mad., 67

3. ———— *Right of grantee of proprietor against purchaser from his successor.*—A zamindar granted part of his zamindari absolutely and died. His grantee was then dispossessed by a purchaser from his successor. *Held* that, as the conditions specified in Regulation XXV of 1802, s. 8, had not been observed by the former zamindar, the grant was voidable on the determination of his interest, and that consequently the disposition was legal. *PITCHAKUTTICHETTI v. PONNAMMA NATCHIYAR* 1 Mad., 148

4. ———— *Alienation not registered—Permanent lease.*—A permanent lease of a village in a muttah by the muttahdar (plaintiff's father) was held to be not invalidated by s. 8 of Regulation XXV of 1802, although the lease had not been registered as required by that section. *Subbarayalu Nayak v. Rama Reddi*, 1 Mad., 141, overruled. *KONDAPPA NAIR v. ANNAMALAY CHETTY* 4 Mad., 396

5. ———— *Permanent lease by zamindar.*—A perpetual or permanent lease at a low fixed rent, made by a zamindar who obtained the zamindari, by self-acquisition, was binding upon the zamindar's successors, although the instrument was not registered under Regulation XXV of 1802, s. 8. *MUTTU VIRAN CHETTY v. KATTUMA NATCHIYAR* [4 Mad., 463

s. 9—*Mad. Reg. XXVI of 1802, s. 2—Madras Land Revenue Assessment Act (Mad. Act I of 1876)—Application to Collector to grant separate registration of portion of tenure sold.*—An application to a Collector to grant separate registration of a portion of a permanently-settled estate which has been alienated by a Court-sale, is.

MADRAS REGULATION—continued**1816—IV**

See COMPTON OF COURT—PENAL CODE,
s 174 I L R, 8 Mad, 248

See EXECUTION OF DECREE—MODE OF
EXECUTION—GENERALLY ETC
[I L R, 9 Mad, 378

See LIMITATION ACT 1877 s 6
[I L R, 9 Mad, 118

See MUNSHI JURISDICTION OF
[I L R, 7 Mad, 220
I L R, 8 Mad, 500
I L R, 11 Mad, 375

See SMALL CAUSE COURT, MORTGAGE—
JURISDICTION—GENERAL CASES
[5 Mad, 45

See SUBORDINATE JUDGE
[I L R, 5 Mad, 232

See TRANSFER OF CIVIL CASE—GENERAL
CASES I L R, 8 Mad, 500

See VALUATION OF SUIT—SUITS
[6 Mad, 151

s 17—*Fakir's fees before
village panchayats*—S 17 of Regulation V
of 1816 has not been repealed by subsequent enact-
ments GOPALU v VENKATADOSH
[I L R, 7 Mad, 553

VI, s 8

See MAGISTRATE JURISDICTION OF—COM-
MITMENT TO SESSIONS COURT
[7 Mad, 182

s 27

See OATH 4 Mad, Ap, 3

VII

See PANCHAYAT I L R, 8 Mad, 569

XI

See MAGISTRATE JURISDICTION OF—SPE-
CIAL ACTS—MADRAS REGULATION IV
OF 1816 I L R, 5 Mad, 268

See SANCTION FOR PROSECUTION—WHERE
SANCTION IS NECESSARY OR OTHERWISE
[I L R, 23 Mad, 540

s 5

See ESCAPE FROM CUSTODY
[I L R, 17 Mad, 103

s 10

See MAGISTRATE JURISDICTION OF—SPE-
CIAL ACTS—MADRAS REGULATION XI
OF 1816 5 Mad, Ap, 32

—*Mussulman Status of
—Punishment in stocks*—A Mussulman is not of
the lower castes of the people punishable under
s 10 of Madras Regulation XI of 1816 by confine-
ment in the village stock QUERV v NABI SAHER
[I L R, 6 Mad, 247

MADRAS REGULATION—continued.**XII**

See COLLECTOR 4 Mad, Ap, 1
[I L R, 8 Mad, 569

See MADRAS REGULATION V OF 1822
[1 Mad, 230

See PANCHAYAT I L R, 8 Mad, 569
[I L R, 15 Mad, 1

XIII

See STAMP—MADRAS REGULATION XIII
OF 1816 I L R, 7 Mad, 440

XIV

See PLEADER—APPOINTMENT AND AP-
PEARANCE 4 Mad, Ap, 43

See PLEADER—REMUNERATION
[1 Mad, 369

XV—Procedure—Pleading—

Allegation of diction—According to Regulation
XV of 1816 of the Madras Code in a suit for
possession of
title of the
son having
avertment of
a direction given by the Court for the production
of evidence in proof of such an avertment VIJAYA
RAGANADHA BODHA GOOROO SWAMY PERRIA
WOODAI TAVER v ANGA MOOTOO NATCHIAL
[8 W R, P C, 50
3 Moore's L A, 278

1817—VII

See ACT XX OF 1803 5 Mad, 334
[7 Mad, 77

I L R, 17 Mad, 95, 212

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See ENDOWMENT 7 Mad, 306

See HINDU LAW—ENDOWMENT—SUCCE-
SSION IN MANAGEMENT
[I L R, 7 Mad, 499

See JURISDICTION OF CIVIL COURT—EN-
DOWMENT 7 Mad, 117

See JURISDICTION OF CRIMINAL COURT—
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[I L R, 1 Mad, 55

s 12

See RIGHT OF SUIT—ENDOWMENTS,
SUITS RELATING TO
[I L R, 13 Mad, 277

1818—VIII

See APPEAL TO PRIVY COUNCIL—STAY OF
EXECUTION PENDING APPEAL
[6 Moore's L A, 300

1821—IV

See MAGISTRATE JURISDICTION OF—SPE-
CIAL ACTS—MADRAS REGULATION XI OF 1816
[I L R, 5 Mad, 268

MADRAS REGULATION—1802—XXIX

—concluded.

succeed in preference to the plaintiff. The "heirs of the preceding karnam" in s. 7 of Madras Regulation XXIX of 1802 mean his next of kin according to the order of succession of the several grades of legal heirs, and not heirs, in the order of succession to undivided divisible ancestral property. *Krishnamma v. Papa, 4 Mad., 234*, followed. *SEETARAMAYYA v. VENKATABAZU* . . . I. L. R., 18 Mad., 420

s. 12.

See PUBLIC SERVANT.

[I. L. R., 15 Mad., 127

XXX.

See LANDLORD AND TENANT—LIABILITY FOR RENT . . . 1 Mad., 3

See LEASE—CONSTRUCTION.

[6 Mad., 164, 175

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[1 Mad., 141

XXXI.

See MADRAS REGULATION XXV OF 1802.

[14 B. L. R., 115

L. R., 1 I. A., 238, 282

XXXII.

See PANCHAYAT . I. L. R., 15 Mad., 1

XXXIV.

See HINDU LAW—USURY . 6 Mad., 400
[1 Mad., 5

1. ————— *Iladarwara mortgage in South Canara—Lease.*—Madras Regulation XXXIV of 1802, which applies to usufructuary mortgages executed before the passing of Act XXVIII of 1855, does not apply in the case of an iladarwara mortgage in South Canara, which, securing to the mortgagee the use and occupation of the land for a long term, amounts to a lease of the property for the term agreed upon. *PERLATHAIL SUBBA RAU v. MANKUDE NARAYANA* . . . I. L. R., 4 Mad., 113

2. ————— *Mortgages where redemption is allowed at the end of any year.*—An instrument of mortgage whereby land is made over to the mortgagee for cultivation, and a grain rent estimated at a certain quantity is to be retained yearly in lieu of interest, with a condition that on the expiry of any year the mortgage might be redeemed and possession recovered on payment of the principal, falls within the purview of Regulation XXXIV of 1802. *Perlathail Subba Rau v. Mankude Narayana*, I. L. R., 4 Mad., 113, distinguished. *TIPPAYYA HOLLA v. VENKATA* . . . I. L. R., 6 Mad., 74

3. ————— *Mortgage by way of conditional sale—Mahomedan mortgagee.*—In 1832 a Mahomedan mortgaged certain land with possession, on condition that, if the money lent was not repaid within eight years, the land should be enjoyed by the mortgagee after that period as if conveyed by sale. In 1883 a suit was brought to redeem. Held that the title of the mortgagee became absolute by virtue of the terms of the contract on default of payment

MADRAS REGULATION—1802—XXXIV

—concluded.

within the time specified. The obligation cast by Regulation XXXIV of 1802 upon a mortgagee to account for profits does not prevent a mortgage by way of conditional sale from becoming, after the period for redemption has elapsed, an absolute sale where no account has been rendered by the mortgagee. The rule laid down in *Pattabhiramier's case*, 13 Moore's I. A., 560, applies to a mortgage executed by a Mahomedan. *MALLIKARJUNUDU v. MALLIKARJUNUDU* . . . I. L. R., 8 Mad., 185

—1803—II, s. 44.

See LAND ACQUISITION ACT, s. 11.

[I. L. R., 13 Mad., 485

IX, s. 55.

See JURISDICTION OF CIVIL COURT—REVENUE . . . I. L. R., 1 Mad., 89

—1804—V.

See GUARDIAN—APPOINTMENT.

[I. L. R., 6 Mad., 187

See LIMITATION ACT, 1877, s. 10.

[I. L. R., 5 Mad., 91

s. 6.

See LUNATIC . I. L. R., 14 Mad., 289

See MINOR—REPRESENTATION OF MINOR IN SUITS . I. L. R., 11 Mad., 309
[I. L. R., 13 Mad., 197

See MISJOINDER . I. L. R., 13 Mad., 197

See RES JUDICATA—PARTIES—SAME PARTIES OR THEIR REPRESENTATIVES.

[I. L. R., 11 Mad., 309

See SALE IN EXECUTION OF DECREE—DECREES AGAINST REPRESENTATIVES.

[I. L. R., 5 Bom., 14

ss. 14 and 20.

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—OTHER GROUNDS.

[I. L. R., 10 Mad., 44

s. 17.

See COLLECTOR . I. L. R., 19 Mad., 255

s. 20.

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY.

[I. L. R., 12 Mad., 445

—1805—I.

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE.

[I. L. R., 4 Mad., 335, 335 note

s. 18.

See SALT, ACTS AND REGULATIONS RELATING TO, MADRAS . I. L. R., 3 Mad., 17

[I. L. R., 1 Mad., 278

—1808—VII.

See LIMITATION ACT, 1877, s. 10.

[I. L. R., 5 Mad., 91

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865)—continued.

of rent *Palamaraya v. Virappa*, 1 Mad, 145, observed upon *SUBBU v. VASANTHAP-
PUN* I L R, 8 Mad, 351

3. ——— and s. 2—*Inamdar—Quit-rent*—An inamdar entitled to receive a jodi or quit rent from other inamdars may have recourse to the summary remedies provided by Act VIII of 1865 (Madras) for the recovery of the quit rent *APPA SAMI v. RAMA SUBBA* I L R, 7 Mad, 203

4. ——— *Landholder—Distrain*—*F* leased certain fields to *S* at a single rent. Of these fields some were held by *F* under a rajawari pottah of *F* under that the said Act in respect of the latter fields, and in consequence that the distraint was illegal *SUBBA v. VENKATA* I L R, 8 Mad, 9

5. ——— and s. 3—*Zamindar delegating powers to mortgagee*—Where a zamindar executed a usufructuary mortgage deed of part of his zamindari and by the deed delegated all his powers under the Rent Act (Madras Act VIII of 1865) to the mortgagee, *Held* that the mortgagee was entitled to enforce the acceptance of pottahs under the provisions of the Rent Act *GUNDA REDDI NARAYANA REDDI v. KRISTNA DOSS BALA MURUNDA DOSS* I L R, 5 Mad, 67

8. ——— and s. 70—*Landholder—“Farmer”—Assignee of landholder—Mortgagee of landholder, Position of*—A mortgagee of a landholder, as defined in Madras Act VIII of 1865, s. 1, may exercise the powers of landholder under the Act—(1) the mortgagee the estate count for the collection of the collection or (2) as an assignee of a landholder under s. 70 if landholders his mortgagee not be inferred ordinary mortgage *VELLALAN CHETTI v. TIRU-
VAKONA* I L R, 5 Mad, 78

As assignee of

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865)—continued.

hypothecation deed and the lease, was not a “landholder” within the meaning of Madras Act VIII of 1865 *ZINULABDIN ROWTEN v. VIJAYEN VIRAPATHEEN* [I L R, 1 Mad, 49]

8. ——— *Landholder—Assignee—*

J L R, 1 Mad, 49, dissented from *DOSS v. SUNDARA* I L R, 8 Mad, 394

9. ——— *Landholder—Manager of estate and until debt is paid—Increase of rent for garden cultivation and second crops*—An instrument authorizing a creditor to manage an estate, recover rent and pay certain disbursements, and retain possession until a certain debt amongst other debts to him was paid, does not create to the creditor a landholder within the meaning of Act VIII of 1865 *VAYITHNATHA SASTRIAL v. SAMI PANDITHER* [I L R, 3 Mad, 116]

10. ——— and s. 13—*Inamdar—Tenant—Right of distraint—Inam Commissioner*—A zamindar holding his estate under a sanad which included, among the assets of the zamindari, the jodi payable by an inamdar, proceeded under the Rent Recovery Act to recover arrears of jodi by distraint. In a suit by the inamdar to release the distraint, it appeared that the plaintiff had sublet the land, and that the rate at which the jodi was claimed exceeded that entered in the Inam Commissioner's pottah.

that his claim was not limited to the amount entered in the Inam Commissioner's pottah *SUB-
NARAYANA v. APPA RAU*

[I L R, 10 Mad, 40]

WATSON GILL DOSS v. WATSON
deceased zamindar. In a suit brought by *S* in 1883.

MADRAS REGULATION—continued.**1822—V.**

See LANDLORD AND TENANT—LIABILITY FOR RENT . . . 1 Mad., 3

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS . 2 Mad., 22, 475

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—RENT.
[2 Mad., 22, 475]

Mirasidar.—Regulation V of 1822 is inapplicable to land held under a mirasidar or any ordinary proprietor. *YANAMANDRAM VENKAYA v. SHILLAKURU VENKATA NARAINA REDDY*
[1 Ind. Jur., O. S., 131]

S. C. ENAMANDARAM VENKAYYA v. VENKATA NARAYANA REDDI. . . . 1 Mad., 75

s. 8.—*Proprietor of permanently-settled estates*.—Regulation V of 1822, s. 8, only applies to zamindars and other proprietors of estates permanently settled under the Regulations of 1802. *NALLATAMBI PATTAR v. CHINNA DEY-VANAGAYAM PILLAI* . . . 1 Mad., 109

s. 18.—*Disputes regarding irrigation*.—*Mad. Reg. XII of 1816*.—Regulation V of 1822 does not apply to disputes respecting irrigation. The disputes mentioned in s. 18 of Regulation V of 1822 are subjected to the procedure provided by Regulation XII of 1816. *RAGAYENDRA RAU v. MAHOMED KANITABAGANAR* 1 Mad., 230

IX.

See COLLECTOR . . . 2 Mad., 322

s. 5.—*Sale of land to recover fine imposed by Collector—Title of purchaser*.—A sale of land under the provisions of s. 5 of Regulation IX of 1822 does not convey to the purchaser a title free from prior incumbrances. *RAMAN v. HASSAN* . . . I. L. R., 9 Mad., 247

ss. 20, 35.—*Remedy confined to parties to suit*.—The remedies provided by s. 35 of Regulation IV of 1816 against Village Munsifs are confined to persons who are parties to suits before such Village Munsifs. *RAMAN v. PAKRICHI*
[I. L. R., 9 Mad., 385]

1825—II.

See STAMP—MADRAS REGULATION II OF 1825 . . . I. L. R., 16 Mad., 419

1828—VII.

See COLLECTOR . . . 2 Mad., 322
[I. L. R., 7 Mad., 420]

1831—IV.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—ANNUITY OR PENSION.
[4 Mad., 277]

See GRANT—CONSTRUCTION OF GRANTS.
[12 W. R., P. C., 33
13 Moore's I. A., 104]

MADRAS REGULATION—1831—IV—concluded.

See GRANT—RESUMPTION OR REVOCATION OF GRANT.
[I. L. R., 14 Mad., 431]

See INAM COMMISSIONER . 2 Mad., 341

VI.

See HEREDITARY OFFICES REGULATION MAD. REG. VI OF 1831.

X.

See DISTRICT JUDGE, JURISDICTION OF.
[I. L. R., 6 Mad., 187
ss. 1, 2, 3.]

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—OTHER GROUNDS.
[I. L. R., 10 Mad., 44]

—XI.

See TREASURE TROVE . . 7 Mad., 150

1833—III.

See VALUATION OF SUIT—SUITS.
[6 Mad., 151]

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865).

See CASES UNDER APPEAL—MADRAS ACTS, MADRAS RENT RECOVERY ACT.
[4 Mad., 227, 251
I. L. R., 4 Mad., 167]

See JURISDICTION OF CIVIL COURT—POTANS . . . I. L. R., 12 Mad., 481
[I. L. R., 13 Mad., 361
I. L. R., 14 Mad., 441
I. L. R., 17 Mad., 1]

See CASES UNDER JURISDICTION OF REVENUE COURT—MADRAS REGULATIONS AND ACTS.

See LEASE—CONSTRUCTION.
[6 Mad., 164, 175]

See POSSESSION—ADVERSE POSSESSION.
[I. L. R., 20 Mad., 6]

See REGISTRATION ACT, 1877, s. 17.
[7 Mad., 234]

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS.
[I. L. R., 17 Mad., 106]

See REVIEW—ORDERS SUBJECT TO REVIEW . . . 4 Mad., 251

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MOVEABLE PROPERTY.
[I. L. R., 11 Mad., 264]

See STATUTES, CONSTRUCTION OF.
[6 Mad., 122]

I. s. 1.—*Inamdar*.—*Mad. Reg. XXV of 1802*.—S. 1 of Madras Act VIII of 1865 does not confine the term "inamdar" to such inamdars as are registered. Held therefore that the purchaser of

MADRAS RENT RECOVERY ACT
(MADRAS ACT VIII OF 1865)—continued

subsequent registration of the landholder in the name of the plaintiffs' undivided brother *Valamaray* and *Virappa* and an I L R 5 Mad 145 and *Ayyappa* v *Venkatakrishnamaya* v I L R 15 Mad 494, followed *RAGHAVA REDDI* *KANNI GRAMANI* I L R, 23 Mad, 221

S 4

See LEASE—CONSTRUCTION

[I L R, 11 Mad, 200]

1. — *Suit for rent—Summary suit to enforce acceptance of pottah*—A suit for rent is maintainable where a pottah in the form required by s 4 Madras Act VIII of 1865 and such as the defendant is bound to accept has been tendered to the defendant although no attempt has been made by a summary suit before the Collector to enforce its acceptance. *HARAJAT KUMARA VENKATA LERUMAL RAJ* v *KANNIAPPAN ZEMINDAR OF KARVATINUGGAR* v *KANNIAPPAN* 4 Mad 149

2. — *Pottah for palmyra palm trees*—Under Madras Act VIII of 1865 a landlord may compel a tenant to accept a pottah for palmyra trees. *MUTTUSAMY MUDALI* v *SADAGOPA GRAMANY* [4 Mad, 398]

3. — *Landlord and tenant—Ex*

which they are meant to express. The 4th section of the Act requires no more than that the pottah should mention the rate and proportion of the produce to be given and not the specific quantity or number of measure. *SESHADRI AYYANGAR* *DANDANAM*

[I L R, 1 Mad, 146]

such water tax under Act VIII of 1865 (Madras) Held that the tenant was not bound to accept the pottah. *BACHU RAMESAM* v *NUKATA BHANAPPA*

[I L R, 7 Mad, 162]

5. — and ss 7 and 87—For n

[I L R, 3 Mad, 127]

6. — and s 11—Acceptance of pottah not in accordance with the Act—A tenant

MADRAS RENT RECOVERY ACT
(MADRAS ACT VIII OF 1865)—continued

tenant by the landlord for arrears of rent. *APPA RAU* v *VIRANNA* I L R, 13 Mad, 271

t. RAJAN

I L R, 23 Mad, 354

landlord not being intended to be a condition of the right to sue. *VENKATA SUBBA ROW* v *SESHA REDDI* [4 Mad, 243]

S 7

See LIMITATION ACT 1877 ART 1°

[I L R, 20 Mad, 33]

See LIMITATION ACT 1877 ART 131

[I L R, 15 Mad, 161]

[8 Mad., 61]

2. — *Suit for arrears of rent—Tender of pottah*—Plaintiff sued for certain arrears of rent. The suit was dismissed as to Fash 12, 1 1872 and 12 2 on the ground that no pottah had been tendered for those Fashs. On special appeal it was contended that no tender was necessary because a suit which had been brought before Fash 12, 1 for the determination of the proper rate of rent was pending during those Fashs. Held that the pending of the suit did not render the tender of pottah unnecessary and that the tenant was not bound to tender a pottah. *PERIYARAJAN PILLAI* v *VARADACHARI* 7 Mad., 51

3. — *Tender of pottah*—A tenant who has accepted a pottah is not bound to tender a pottah to the landlord if the pottah is not in accordance with the Act.

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865)—continued.

to recover the village.—*Held* that the sale was binding on *S*, and that the suit was barred by limitation. *BASKARASAMI v. SIVASAMI*. I. L. R., 8 Mad., 196

2. ——— *Limitation*.—In a suit by a tenant against a zamindar to release an attachment made under the Madras Rent Recovery Act, s. 40, it appeared that, according to the kistbandi obtaining in the zamindari, rent was payable in monthly instalments, commencing with November in each Fasli. *Held* that the unit for the rule of limitation prescribed by Rent Recovery Act, s. 2, for proceedings by the landlord was the aggregate rent in arrear at the end of the Fasli. *APPASAMI v. SUBBA* [I. L. R., 13 Mad., 463]

1. ——— s. 3—*Purchaser of zamindari village without separate assessment—Landholder*.—A zamindar having mortgaged one of his zamindari villages to *V*, a proportionate amount of the peshkush due by the zamindar was paid to the treasury by *V* by agreement. Having sued the zamindar, and brought to sale and purchased the village at the Court sale, *V* continued to pay the peshkush as before to the treasury, although the village was never separately assessed under s. 8 of Regulation XXV of 1802. *Held* that *V* was not entitled to enforce the acceptance of a pottah under the provisions of the Rent Recovery Act. *VALAMARAMAYYAN v. VIRAPPA KANDIAN*. I. L. R., 5 Mad., 145

2. ——— *Purchaser of four shares in shrotriyam village—Landholder*.—Where the holders of shares in a shrotriyam village have not received or agreed to receive the rent separately from the tenants according to their shares, the several shareholders constitute one landholder under the Rent Act, and one sharer is not entitled to enforce acceptance of a pottah by the tenants in respect of the proportionate rent payable to him. *KRISHNAMACHAN v. GANGARAU REDDI*. I. L. R., 5 Mad., 229

3. ——— *Landholders—Muglar*.—*Quere*—Whether a muglar is within the class of landholders defined in the Madras Rent Recovery Act, s. 3. *KRISHNA v. LAKSHMINARANAPPA* [I. L. R., 15 Mad., 67]

4. ——— *Registered zamindar—Zamindari held in co-parcenary—Co-sharers, Right of one of several to sue*.—A registered holder of a zamindari sued under the Madras Rent Recovery Act to enforce the acceptance of a pottah and execution of a muchalka by the defendant, a tenant on the estate. It was pleaded in defence that the zamindari was the undivided property of the plaintiff and his co-parceners, in whose name a pottah and muchalka had already been exchanged. *Held* that the plaintiff, as being the registered zamindar, was entitled to maintain the suit alone. *AYYAPPA v. VENKATAKRISHNAMARAZU*. I. L. R., 15 Mad., 484

5. ——— and ss. 4 and 7—*Contents of pottah—Date of tender of pottah*.—A landlord within three days of the end of the Fasli tendered to a tenant by way of pottah a document containing a statement of account of rent payable in

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865)—continued.

respect of the current Fasli. *Held* that the document tendered was a good pottah, and that under local custom a valid tender of a pottah may be made at the end of the Fasli. *NARAYANA v. MUNI* [I. L. R., 10 Mad., 363]

6. ——— and ss. 4, 9—*Landlord and tenant—Right to enforce acceptance of pottah*.—The renter of a zamindari, to whom the right to collect the kuttubadi or quit-rent on inam lands and the road-cess payable to Government was delegated, sued to compel the inamdars to accept pottahs and execute muchalkas for the amounts due. *Held* that the inamdars, not being cultivating tenants, were not bound, under Act VIII of 1865 (Madras), to accept a pottah. *Ramasami v. Collector of Madura*, I. L. R., 2 Mad., 67, referred to. *RAMA v. VENKATACHALAM*. I. L. R., 8 Mad., 576

7. ——— and ss. 8, 9, and 11—*Agreements between landlords and tenants*.—The pottahs and muchalkas mentioned in s. 3, Madras Act VIII of 1865, must be understood to embrace those written agreements only which are mutually interchanged by a landlord and those of his tenants who are actually engaged in the cultivation of the lands to which they relate, since the remedies which the Act provides in ss. 8 and 9 can only be made available where the relation of landlord and tenant, or a holding of some sort, already exists upon such a basis that the landlord or the tenant, as the case may be, can come into Court and claim to have a writing granted to him. *Semble*—If a lease granted by a zamindar to an intermediate holder could be considered a pottah within the meaning of s. 3 of Madras Act VIII of 1865, it would, under the proviso to s. 11 of that Act, be liable to be set aside by the successor of the grantor if granted at a lower rate than that generally payable on such lands, and not for the purposes mentioned in the said proviso. *RAVASAMI v. BHASKARASAMI. RAMASAMI v. COLLECTOR OF MADURA*. I. L. R., 2 Mad., 67

8. ——— and s. 9—*Mokhassa-inamdars paying kuttubadi to the zamindar—Obligation to accept pottah*.—Mokhassa-inamdars who hold lands in a zamindari and pay kuttubadi annually to the zamindar, and who are not cultivating tenants, are not bound to accept a pottah from the zamindar. *LAKSHMINARAYANA PANTULU v. VENKATARAYANAI* [I. L. R., 21 Mad., 116]

9. ——— *Mad. Reg. XXV of 1802, s. 8—Non-registration of landholder—Subdivided brother of landholder—Suits for exchange of pottah and muchalka for Fasli 1306 ending June 30th, 1897*, were dismissed in the Sub-Collector's Court in August 1897 on the ground that the plaintiffs were not the registered landholders. Pottah had been tendered in June 1897. Plaintiffs appealed. Subsequent to the filing of such appeals, namely, in December 1897, the Collector registered the undivided brother of the plaintiffs (who had died in April 1897), and it was contended at the hearing of the appeals that such registration covered all the undivided

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865)—continued

s 9

See JURISDICTION OF REVENUE COURT—
MADRAS REGULATIONS AND ACTS
[I L R, 17 Mad, 140]

See RES JUDICATA—COMPETENT COURT—
REVENUE COURTS
[I L R, 13 Mad, 287]

1 ———— Tender of pottah during
the 1st 8 days after Fasli—A suit to en

2 ———— and s 51—Refusal by
tenant
Per
On
to a
On this day
to enforce its acceptance Held that the suit was
brought in time MUNISAMI NAIDU v KRISHNA
REDDI [I L R, 23 Mad, 474]

3 ———— Rate of rent where rate is
disputed—Before a dispute regarding the rate of
rent has been decided in a suit brought under s 9 of

MUDALI KRISTNA RAU v NENIAPPA MUDALI
KRISTNA RAU v BOLAYAPPA MUDALI KRISTNA
RAU v CHINNA SUBBU MUDALI KRISTNA RAU v
KRISHNA MUDALI 6 Mad, 204

4 ———— Landholder—Tender of

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CHANDA MIAN SAHIB v LAKSHMANA AITANGAR
[I L R, 1 Mad, 45]

tryamdar PURUSHOTTAMA v RAJU
[I L R, 11 Mad, 11]

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865)—continued

fetch the pottah and execute the muchalka Held
that there was sufficient tender of a pottah to support
a suit under s 9 of the Madras Rent Recovery Act
MARUTHAPPA v KRISHNA [I L R, 12 Mad, 253]

7 ———— Tender of pottah by post—
Landlord and tenant—A landlord sent a pottah by
post to his tenant who declined to receive it Held
the tender of the pottah by post was not sufficient to
support a suit under s 9 of the Madras Rent Re-
covery Act SAMINATHA v VIRANNA
[I L R, 13 Mad, 42]

8 ———— Omission to tender pottah—
Rent claimed by landlord of having tendered legal

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lord not having tendered a legal pottah was not in a
condition to establish any right to recover rent
directly or by way of set off KULLAYAPPA v
LAKSHMIPATHI [I L R, 12 Mad, 467]

9 ———— and s 7—Demand of
pottah—The Rent Recovery Act does not require
that a tenant demanding a pottah shall apply in
writing to the landlord specifying the lands and
the Fasli for which the pottah is required STRIN-
IVASA v NARAYANASAMI [I L R, 8 Mad, 1]

10 ———— and s 10 and s 7—
Suit to enforce terms of tenancy—Suit to determine
terms of tenancy—Pottah Jurisdiction of Revenue
Court—A suit under s 9 of Madras Act VIII of
1865 to enforce the acceptance of a pottah is not a
suit to enforce the terms of a tenancy within the
meaning of s 7 of the same Act but a suit to deter-
mine those terms ZAMINDAR OF DEVARACOTA v
VEMURI VENKATYA [I L R, 1 Mad, 389]

and ss 10, 11—1

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Court that the pottah tendered was not a proper
pottah The Appellate Court ought to pass the
decree which the Court of first instance should have
passed NAGARAJA v HASIMIA

[I L R, 11 Mad, 23]

12 ———— and ss 10, 11—Im-
proper stipulations in pottah—Claim of tenants to
hold over land after expiry of lease—Civ. Proc.
Code s 544—In summary suits brought by a

MADRAS RENT RECOVERY ACT
(MADRAS ACT VIII OF 1865)—*continued.*

VIII OF 1865. VENKATACHELIAM CHETTI v. KADUMTHURAI . . . I. L. R., 4 Mad., 145

4. ———— *Suit for rent dismissed—Suit for use and occupation barred.*—A landlord who has failed in a suit for rent under the Rent Recovery Act cannot bring a fresh suit for use and occupation. ALI KHAN v. APPABU

[I. L. R., 7 Mad., 304

5. ———— and ss. 9 and 10—*Pottah tendered within Fasli—Suit after Fasli, when pottah amended—Maintainability of suit.*—A landholder tendered a pottah within the Fasli. After the close of the Fasli, he brought a suit to enforce its acceptance when the pottah was amended. After judgment in that suit, the landholder attached the land; whereupon the tenant sued to have the attachment set aside, on the ground that, as no proper pottah had been tendered within the Fasli, and the suit which resulted in the rectification of the pottah had been filed after the close of the Fasli, the landholder was precluded from enforcing his claim.—*Held* that, inasmuch as judgment had been obtained, fixing the terms of the pottah, the tenant could not plead, in answer to an action for rent, the incorrectness of the pottah originally tendered. A landholder has a choice of two alternatives. If he satisfies himself that the pottah tendered by him is the right one, he may bring his suit for rent or take other measures to recover it. He takes his chance of some flaw being discovered in the pottah. If he is not so satisfied, he institutes a suit under s. 10 of the Rent Recovery Act, and obtains a judgment which fixes the terms of the pottah for that Fasli beyond all dispute. MUNISAMI NAIDU v. PERUMAL REDDI I. L. R., 23 Mad., 616

6. ———— *Tender of pottah—Unreasonable condition.*—A tenant is not bound to accept a pottah which requires him to relinquish, at the close of the Fasli, land which he has been unable to cultivate. VEDANTA CHARLAK v. AYYASAMI MUDALI . . . I. L. R., 4 Mad., 322

7. ———— *Tender of pottah.*—When a Collector in a suit brought under the provisions of the Rent Recovery Act has decided that a tenant is to accept a pottah on certain terms, the landholder is not bound to tender such pottah for acceptance before suing to enforce the terms thereof. COURT OF WARDS v. DARMALINGA . . . I. L. R., 8 Mad., 2

8. ———— *Pottah—Rate of rent—Indefinite stipulations.*—In a pottah tendered by a landlord to his tenant under s. 7 of Act VIII of 1865 (Madras), the rate of rent should be ascertained and declared even where the rate may vary with the means of cultivation or the frequency of cultivation or where the quantum of rent may vary with an increase or reduction in the area of the holding. A landlord tendered a pottah to his tenant which contained the following stipulations: "If you cultivate by the aid of Sirkar services of irrigation, wet crops on dry land, you must pay water rate settled according to the highest nanjai assessment of neighbouring land. If you occupy land in excess of that entered

MADRAS RENT RECOVERY ACT,
(MADRAS ACT VIII OF 1865)—*continued.*

in this pottah, you must pay the appropriate assessment, or if the assessment has not been fixed, then such assessment as our Sirkar may settle." *Held* that the pottah was not one which the tenant was bound to accept. VANKATA RAMANJULU NAYUDU v. RAMACHANDRA NAYUDU . . . I. L. R., 7 Mad., 150

9. ———— *Landlord and tenant—Acceptance of muchalka without delivery of pottah—Presumption.*—When a muchalka has been taken from a tenant under the Rent Recovery Act (Madras Act VIII of 1865), but no pottah granted, this is some evidence that the tenant dispensed with the delivery of a pottah, and legal proceedings ought not to be set aside merely because no pottah and muchalka have been exchanged without enquiry, as to whether the parties have agreed to dispense with pottahs and muchalkas. VARATHACHARI v. BALU NAICKEN

[I. L. R., 3 Mad., 255

10. ———— *Landlord and tenant—Exchange of pottah and muchalka.*—Under s. 7 of Madras Act VIII of 1865, the agreement to dispense with the exchange of pottah and muchalka need not be express, but it must appear that this provision of the law was present to the minds of the contracting parties, and that they deliberately elected not to act upon it. The mere existence of a verbal lease is insufficient to raise the presumption that the exchange of pottah and muchalka has been dispensed with. KOMIREDDI VARAHA NARASIMHAM v. CHEVALA RAMASAMI NAYUDU . . . I. L. R., 5 Mad., 136

11. ———— and ss. 3 and 13—*Suit for recovery of rent—Exchange of pottahs and muchalkas—Tender of pottah.*—Suits for the recovery of rent cannot be maintained in the Civil Courts by the landholders described in s. 3 of Madras Act VIII of 1865, unless pottahs and muchalkas have been exchanged between the landholder and the tenant as required by s. 7 of the Act, or some one of the other conditions of the section has been complied with. So held by MORGAN, C.J., INNES, J., and KINDERSLEY, J. (HOLLOWAY, J., dissentiente). But such suit may be maintained by the landholders described in s. 13 of the Act without complying with the requirements contained in s. 7. So held by MORGAN, C.J. (KINDERSLEY, J., dissentiente). *Held* also that, in cases where pottahs must be tendered, tender must be made before the expiration of the Fasli for which rent is sought to be recovered. GOPALASWAMY MUDELLY v. MUKKEE GOPALIER

[7 Mad., 312

VENKATASAMI NAIK v. SITUPATI AMBALAM

[7 Mad., 359

s. 8.

See THEFT . . . I. L. R., 16 Mad., 364

— *Suit to enforce tender of pottahs—Suit brought after expiration of Fasli.*—A tenant is not entitled to bring a suit under Rent Recovery Act, 1865, s. 8, to enforce the tender of a pottah by his landlord after the expiration of the Fasli to which the pottah relates. RAMASAMI MUDALIAR v. KATHNA MUDALIAR . . . I. L. R., 21 Mad., 148

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865)—continued

2 ———— *cls. 1, 2, 3, 4—Improvements effected by tenant—Enhancement of rent—Sanction of Collector—The sanction of the Collector*

THE LAND OF THE TENANT.—Government, is not requisite when, improvements having been made by the tenant, the landlord seeks to enhance the rent. *Per MUTTUSAMI AYYAR, J—* The proviso to cl 4 of s 11 of the Rent Recovery Act implies that, when the tenant has improved the land at his own expense, the landlord is not entitled on that ground to enhance the rent. *Semle—* s 11 which provides that all contracts

by the tenant the proper rate of rent has to be determined with reference to the several provisions of s 11, quite irrespective of the improvements. *VENKATAGIRI RAJA v. PITCHANA*

[I L R, 9 Mad, 27]

3 ———— *rule 3—Rate of rent, Determination of—Neighbouring lands of similar land—The provision in Madras Act VIII of 1865, s. 11, rule 3—* And when such usage is not clearly ascertainable, then according to the rates established or paid for neighbouring lands of similar description and quality"—does not admit of rates of rent being determined on an average of varying rates paid for neighbouring lands, but it does not require, for determination of the proper rate of rent for particular land the existence of a fixed general rate

MAHA SINGAVASTHA AYYAR v. GOPALA AYYAR

[6 Mad., 239]

4. ———— *Implied contract—*

GRISHAM SASTRI v. — The tenant had raised a crop with water taken from a well constructed by the tenant.—*Held* that there was an implied contract within the meaning of s 11 of the Rent Recovery Act to accept rent at "dry" rates, and that plaintiff was therefore not entitled to enhance the rate of rent, the improvement having been effected at the expense of the tenant. *KRISHNA v. VENKATASAMI*

I L R, 8 Mad., 164

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865)—continued.

within the provisions of s 11 of Act VIII of 1865
VATHENATHA SASTRIAL v. SAMI PANDITHAR

[I L R, 3 Mad., 116]

6. ———— *Enhancement of rent—Custom—* The imposition by a zamindar of garden assessment on land brought under garden cultivation by a tenant who improved the land by sinking a well after 1865 is illegal, although there might be a custom in the zamindari of charging a varying assessment according to the kind of crop raised. *FISCHER v. KANAKSHI PILLAI*

[I L R., 21 Mad., 136]

but applies only to such leases when, in the circumstances in which they are made they amount to a fraud upon the power of the grantor's successor as manager or to alienations made for the personal benefit of the grantee and to the prejudice of the successor. *RAMANADAN v. SRINIVASA MURTI*

[I L R, 2 Mad., 80]

8 ———— *Change of cultivation—Sanction of Collector—* Where a land owned claimed to revert to nanjai rates (assessed on irrigated land) of rent on the ground that he had repaired a tank, which for years had been unrepaired.—*Held* that the sanction of the Collector was not required by s 11 of the Rent Recovery Act. *LAESHIMANAN CHETTI v. KOLANDAIVELU KUDUMBAN*

[I L R., 6 Mad., 311]

9 ———— *Sanction of Collector—Suit for increased assessment on ground of improvements—* In a suit before the Collector under Madras Act VIII of 1865, brought by a zamindar to compel his tenants, the defendants to accept a pottah at enhanced rates of assessment, on the ground that

condition that an additional revenue was levied on him consequent upon the improvement made. *KATTASAWMY v. SANDAMA NAIR*

5 Mad., 234

10. ———— *Implied contract as to rates of rent—Customary fees—Restraint on building—Landlord and tenant—* In order to support the inference of a contract under the Madras Rent Recovery Act, s. 11, from payment of the same rent for a given number of years, the intention that the same rent is payable in future years must be clear and unequivocal it is unsafe to imply such a contract from a single lease for five years. A pottah is not unenforceable by reason of its providing

MADRAS RENT RECOVERY ACT
(MADRAS ACT VIII OF 1865)—*continued.*

andlord to enforce acceptance by his tenants of pottahs tendered by him for the current Fasli, it was pleaded that the pottahs were improper in that they did not comprise certain land of which the tenants were in possession and in which they claimed permanent occupancy rights, and also in that they contained various terms which the plaintiff was not entitled to impose on the defendants, providing (*inter alia*) (1) that interest should be payable on the several instalments of rent as they became due; (2) that the defendant should not fell certain trees except for agricultural purposes; (3) that the defendants should not reap their crops without previously obtaining the plaintiff's permission; (4) that on a change made without the plaintiff's permission from dry to wet cultivation, the tenancy should be forfeited in case of default made by the defendants in paying the amount of Government assessment, and also an undetermined sum then to become payable by the defendants to the plaintiff in addition to the rent. The defendants failed to prove the permanent occupancy rights claimed over the land not comprised in the pottahs, and it appeared that they had held leases from the plaintiff for the land in question for a period of three years and had held over after the expiry of the leases without the permission and contrary to the wishes of the landlord; and it further appeared that the provision as to trees did not extend to shrubs, etc., and had been an accepted term in the pottahs issued for ten years. The Revenue Court modified the terms of the pottahs and passed decrees that the pottahs as modified be accepted, against which some only of the defendants appealed, and the District Judge on appeal introduced further modifications into the pottahs. *Held* (1) that the District Judge had no jurisdiction under Civil Procedure Code, s. 544, to introduce further modifications into the pottahs in favour of the defendants who had not appealed according to the opinion formed by him in appeals preferred by the defendants in other suits; (2) that the defendants were not entitled to have the pottahs modified by enlarging the extent of the land comprised in them, or by the cancellation of the provisions as to interest and as to felling trees; (3) that the defendants were entitled to have the pottahs modified by the cancellation of the provision as to reaping crops and of the provision for forfeiture. **RANGAYYA APPA RAU v. KADIYALA RATNAM**

[I. L. R., 13 Mad., 249]

13. ——— and ss. 79, 80—*Yeomiah lands—Unregistered holder rendering service and granting pottahs—Estoppel by acquiescence of persons entitled to the yeomiah holding.*—A yeomiahdar died, leaving a brother, who was then out of India. Shortly before his death, he made an invalid assignment of his holding to a third person who performed the service, and granted pottahs of the land. The holding was resumable on failure of the service. The brother of the late yeomiahdar returned after three years and obtained registration of his title. He now filed this suit to enforce acceptance of pottahs tendered by him to the raiyats, who had already accepted pottahs from, and executed muchalkas to,

MADRAS RENT RECOVERY ACT
(MADRAS ACT VIII OF 1865)—*continued.*

the assignee. *Held* that the suit was not maintainable, as under the circumstances the plaintiff's conduct justified the tenant's belief that the assignee was entitled to collect rent from them until the assignment was questioned by the plaintiff, and notice of his title given to them. **KHADAR v. SUBRAMANYA**

[I. L. R., 11 Mad., 12]

s. 10.

See JURISDICTION OF CIVIL COURT—
POTTAHS . I. L. R., 17 Mad., 1

See JURISDICTION OF CIVIL COURT—
REVENUE COURTS—ORDERS OF REVENUE
COURTS . I. L. R., 9 Mad., 39
[I. L. R., 21 Mad., 482]

See JURISDICTION OF REVENUE COURT—
MADRAS REGULATIONS AND ACTS.
[I. L. R., 17 Mad., 140]

See LIMITATION ACT, 1877, ART. 110.
[I. L. R., 17 Mad., 225
I. L. R., 19 Mad., 21]

I. L. R., 22 Mad., 248, 249 notes, 250 note

See SUPERINTENDENCE OF HIGH COURT—
CIVIL PROCEDURE CODE, s. 622.
[I. L. R., 16 Mad., 451]

1. ——— *Power of Collector to enforce ejectment for default—"Default," Meaning of—* *Quare*—Whether a Collector can enforce ejectment for the default specified in s. 10 of the Rent Act, where the ultimate judgment in the case has been that of an Appellate Court, and not of his own Court. *Semble*—"Default" in s. 10 of the Rent Act means wilful default. **YAKUB SAHIB v. JAFFER ALI SAHIB**

[I. L. R., 4 Mad., 167]

2. ——— and s. 69.—A landlord having sued his tenant under the Rent Recovery Act to compel him to accept a pottah, the Revenue Court directed the tenant to accept the pottah as amended by the Court. On appeal by the tenant, the District Court directed a further amendment of the pottah. Three months after the decree of the District Court, the landlord applied to the Revenue Court to eject the tenant under s. 10 of the Rent Recovery Act for not accepting the pottah and executing a muchalka, and six months after the date of that decree the Revenue Court ordered the tenant to be ejected. *Held* that s. 10 of the Rent Recovery Act (which provides that, if within ten days from the date of the Collector's judgment the defendant shall not have accepted the pottah as approved or amended by the Collector, and shall not have executed a muchalka in the terms of the said pottah, the Collector, on proof of such default, shall pass an order for ejecting the defendant) did not warrant the order. **YAKUB v. NARASINGA**

[I. L. R., 7 Mad., 572]

1. ——— s. 11—*Water-cess—Tenants—Cultivation improved by water taken from landlord's tank.*—A landlord has a right to charge water-cess when his tenant cultivates a wet crop on dry land or a second wet crop on wet land by means of water taken from the landlord's tank. **THAYAMMAL v. MUTTIA**

[I. L. R., 10 Mad., 292]

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1885)—continued

17 — *Enhanced rent on irrigated land—Sanction by Collector of enhanced rent—Customary contribution to a temple—Implied contract—Landlord and tenant—A zamindar tendered to raiyats on his estate pottahs providing (inter alia) for the payment of (1) certain fees to a Hindu temple (2) rent in which the land assessment was consolidated with a water cess in respect of certain*

prima facie voluntary and should not be treated as a payment which the zamindar could compel a raiyat to make and consequently that the pottah tendered to him was an improper pottah (2) that the finding as to the existence of an implied contract

rent as contradistinguished from its enhancement on account of improvements. *SIRIPATAPU RAMANNA v. MALLIKARJUNA PRASADA NAYUDU*
[I L R, 17 Mad, 43]

18 — *Enhanced rent on irrigated land—Sanction by Collector of enhanced rates of rent—Implied contract to pay rent at a certain rate—Landlord and tenant—In a suit brought by the Collector of a district as receiver of a zamindari against a tenant on the estate to enforce the exchange of pottah and muchalka it appeared*

the future could be inferred—*Held* upon the facts of the present case that no such contract could be inferred. With reference to the Full Bench decision in *Venkatagopal v. Rangappa* I L R 7 Mad, 36, the Court stated what was the principle to be kept in view in considering whether an implied contract to pay enhanced rent could be inferred. *MALLIKARJUNA PRASADA NAYUDU v. LAKSHMINARAYANA*
I L R, 17 Mad, 50

19 — *Enhanced rent on irrigated land—Sanction granted by Head Assistant Collector—Customary rent—Implied contract*

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1885)—continued

—*Restraint on building—Landlord and tenant—A Head Assistant Collector is competent to grant a sanction for the enhancement of rent under the Madras Rent Recovery Act s 11. The granting of such sanction is a judicial and not a merely administrative act and such sanction should not be granted without first giving notice to both the landlord and the tenant and hearing and considering the contentions of both parties. In a suit by the landlord to enforce the exchange of a pottah and muchalka the tenant objected to the rate of rent imposed on part of the land which as dry land converted into wet. Held that the finding of the lower Appellate Court that there was an implied contract to pay rent at such rate was not open to any legal objection. It appeared that the pottah tendered contained a stipulation for the payment of rent at a special rate for garden (jarib) lands watered by wells which had been constructed by the raiyat at his own cost and also comprised a stipulation that the raiyat should not build on his hold. The Court of first appeal held that the special rate of rent above referred to was customary and had been followed for many years. Held that there was no ground for interference on second appeal with the lower Appellate Court's decision regarding the former of the stipulations above referred to but that the latter should be modified as to prevent the raiyat only from raising any building incompatible with an agricultural holding. *BRUPATI v. RANGAYYA APPA RAU*
I L R, 17 Mad, 54*

20 — *Implied contract as to rent—Land irrigated under Kistna anicut—Collector's sanction to increase of rent—Land in a zamindari in the Kistna delta was newly irrigated from ancient channels. The zamindar tendered pottahs at wet rates. Held (1) that the zamindar was not entitled to levy increased rates without the Collector's sanction under s 11 of Madras Act VIII of 1885 although he had expended money on the channels (2) that payment for five years of such wet rates under a five years lease did not imply a contract to continue such payments (3) that a stipulation in the previous lease binding the tenants to pay such increased rates in case of future irrigation did not bind the tenants after the term of that lease expired. *NARASIMHA NAYUDU v. RAMASAMI*
[I L R, 14 Mad, 44]*

21 — *Lands irrigated from Kistna anicut—Madras Act VII of 1865 s 4—Restriction as to felling trees—Implied contract as to rent—A zamindar holding lands irrigated by the Kistna anicut from whom no extra peishchash is on that account levied by Government, is not entitled to impose on his tenants a wet rate of rent without the permission of the Collector under s 11 of Madras Act VIII of 1885. The fact that the tenants have paid rent at such a rate for six years is not sufficient to establish an implied covenant to continue to do so. It is allowable for a landlord to insert in his pottahs a term to the effect that the tenant shall not fell*

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865)—continued.

for the payment of fees to village artizans in a case where such fees are customary, or by reason of its prohibiting the tenant from erecting buildings on his holding, if such prohibition is limited to erections not compatible with the agricultural character of the holding. **LAKSHMANA v. APPA RAU**

[I. L. R., 17 Mad., 73]

11. ———— *Assignee of revenue*
—*Suit to enforce acceptance of pottah by raiyat—*
Terms of pottah.—An inamdar, who was assignee of the revenue of land, sued to compel a raiyat to accept a pottah for the land at varam rates under the provisions of s. 11 of the Rent Recovery Act. *Held* that the only pottah which the defendant was bound to accept was a pottah prescribing payment of the revenue charged on the land. **PALANIAPPA v. RAYA**

[I. L. R., 7 Mad., 325]

12. ———— *Reduction of assessment in pottah of 1810—Pottah prescribing rent to be paid permanently by tenant.*—In 1810 a mittadar granted to a tenant a pottah for certain land in which the tenant had already a heritable estate, fixing the rent at the reduced rate R10. The document provided "this sum of R40 you are to pay perpetually every year per kistbandi in the mitta catcheri." It appeared that the rent fixed was less than what was payable upon the lands previous to the date of the pottah and also less than that payable upon neighbouring lands of similar quality and description. *Held* that the reduction in the rate of rent was not invalidated by Rent Recovery Act, 1865, s. 11. **FOULKES v. MUTHUSAMI GOUNDAN**

[I. L. R., 21 Mad., 503]

13. ———— *Reduction of rent—Improvements by tenant—Whether grant of reduction binding on successors.*—Where a landholder has granted a reduction of rent otherwise properly payable in respect of land, the mere fact that the tenant has made some improvements subsequent to the grant does not bring the case within the exception to the proviso of s. 11 of the Madras Rent Recovery Act, 1865, so as to be binding on the landholder's successor. **OBAL GOUNDAN v. RAMALINGA AYYAR**

[I. L. R., 22 Mad., 217]

14. ———— *and s. 9—Condition of pottah—Established rates of rent—Rent in kind.*—The zamindar of Vallur sued certain raiyats in his pergunnah of Gudur to enforce the acceptance of pottahs providing, among other conditions, that the raiyats should relinquish their holdings at the end of the term unless fresh pottahs were tendered to them, that they should pay half the cost of repairs by a cess proportioned to the wet rate, that if they irrigated dry land they should pay a wet rate to the zamindar, as well as the water rate due to Government, that they should not cut crops without permission, and should supply grass and vegetables to the zamindar's servants. It appeared that in 1853 the pergunnah in question was surrendered to Government, who restored it subject to the payment of a newly-assessed peishcush in 1862, a date when the present defendants were already in occupation of

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865)—continued.

their respective holdings. In the interval, Government collected village rents in money. The pergunnah was not surveyed, and a money assessment fixed prior to 1859. The District Judge expunged the conditions in the pottah above referred to, and held that the zamindar was entitled to collect, by way of rent from the raiyats respectively, the quota of the village rents, which each raiyat paid in 1861. He found, however, that there was no contract, express or implied, as to the rent to be paid; and that prior to 1851 the raiyats held their lands under the zamindar on the sharing system, and that for the first year after the restoration of the pergunnah the arrangement enforced by Government had remained in force, but that from 1863 to 1870 the sharing system was in force, and varam was paid by the raiyats, after which for five years individual money rents were collected, and then there were two leases with money rents each for a period of five years. *Held* (1) that the conditions in the pottah above referred to were unenforceable and had been rightly expunged; (2) that the plaintiff's rights were not limited by the rates of rent paid to Government in 1861, but that the rent should be discharged in kind according to the established rate of varam in the village; (3) that the plaintiff was entitled to recover from the raiyats half the water-tax payable on the poramboke lands irrigated from the Kistna aicut. **VENKATA NARASIMHA NAIDU v. RAMASAMI**

[I. L. R., 18 Mad., 216]

15. ———— *Suit to assess proper rate of rent—Determination of rate of rent.*—In a suit by the plaintiffs as inamdars to compel the defendants, occupiers of plaintiffs' land, to accept pottahs under Madras Act VIII of 1865, the defendants objected to the rates of rent claimed by the plaintiffs. There was no contract between the parties as to the rent to be paid, nor was there any assessment made under a survey made previous to the 1st January 1859. *Held* that the proper rent to be paid by the defendants was to be determined according to the rates established or fixed for neighbouring lands of a similar kind. **MAHASINGAVASTHA AYYA v. GOPALIYAN. GOPALIYAN v. MAHASINGAVASTHA AYYA**

[5 Mad., 425]

16. ———— *Contract to pay a certain rent implied from payment in past years.*—S. 11 of the Rent Recovery Act provides that in the decision of suits involving disputes regarding rates of rent which may be brought before Collectors under ss. 8, 9, and 10, all contracts for rent, express or implied, shall be enforced. *Held* that payment of rent in a particular form at a certain rate for a number of years is not only presumptive evidence of the existence of a contract to pay rent in that form or at that rate for those years, but is also presumptive evidence that the parties have agreed that it is obligatory on the one party to pay and the other to receive rent in that form and at that rate, so long as the relation of landlord and tenant may continue. **VENKATAGOPAL v. RANGAPPA**

[I. L. R., 7 Mad., 36]

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865)—continued

summary suit can be brought under s 20 The cause of action in such a case is the illegal distrant, and the continued detention of, and refusal to restore, the property are only aggravations of that wrong *Semle*—A summary suit under s 17 would lie under such circumstances for loss or damage sustained when the distress has been declared ille

BHAGIRATHI PANDA v PADALA GOBALUDU

[I L R, 3 Mad, 121]

s 18

See SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—IRREGULARITY

[I L R, 20 Mad, 498]

Attachment and sale of the tenant's interest in the land for arrears of rent—Under s 38 of the Madras Rent Recovery Act a landlord cannot attach the saleable interest of a defaulting tenant in the land, until the expiry of the current revenue year *THAYAMMA v KULANDAVELU*

[I L R, 12 Mad, 465]

s 27

See APPEAL—DECREES

[I L R, 13 Mad, 248]

See SMALL CAUSE COURT, MOPPUSIL—JURISDICTION—WRONGFUL DISTRAINT

[4 Mad, 401]

s 33

See SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—OTHER GROUNDS

[I L R, 8 Mad, 6]

s 35

See STAMP ACT, 1869 s 3

s 8 Mad, 112

and s 70—Sale of tenant's interest—Refusal of Collector to give certificate—A sale of the tenant's interest in certain land having taken place under ss 39 and 40 of the Rent Recovery Act, the Deputy Collector refused to issue sale certificate to the purchaser, on the ground that the sale had been irregularly conducted *Held* that under s 35 of the Rent Recovery Act, the purchaser was entitled to a sale certificate *VELLI PERITA MIRA v MOUDY PADSHA*

[I L R, 9 Mad, 332]

s 38

See ATTACHMENT—ALIENATION DURING ATTACHMENT

[I L R, 8 Mad, 573]

See SALE FOR ARREARS OF RENT—INCUMBRANCES

[I L R, 7 Mad, 31]

[I L R, 2 Mad, 234]

[I L R, 10 Mad, 260]

See SALE FOR ARREARS OF RENT—RIGHTS AND LIABILITIES OF PURCHASERS

[I L R, 6 Mad, 428]

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865)—continued

ss. 38 and 39

See LIMITATION ACT 1877, ART 12

[I L R, 20 Mad, 3]

[I L R, 3 Mad, 114]

2—Service by affixing notice of intention to sell on some conspicuous part of the tenant's land—Residence of tenant in foreign territory—The provision of s 39 of the Rent Recovery Act that the notice of an intention to sell the land should be served at his usual place of abode, denotes some place in the neighbourhood of the land in respect of which the pottah was tendered, and does not apply when the tenant resides in foreign territory *OLIVER v ANANTHAMAYYAN*

[I L R, 18 Mad, 30]

ss 39 and 40.

See RIGHT OF SUIT—LANDLORD AND TENANT, SUITS CONCERNING

[I L R, 10 Mad, 368]

See SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—IRREGULARITY

[I L R, 20 Mad, 498]

s 40

See LIMITATION ACT 1877 ART 12

[I L R, 20 Mad, 33]

See SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—IRREGULARITY

[I L R, 20 Mad, 498]

See STAMP ACT 1869 s 3

[8 Mad, 112]

ss 41, 43

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, MADRAS

[5 Mad, 289]

s 44—Delivery of possession—Appeal—Lisitation—A obtained a warrant ejecting B for arrears of rent under s 41 of the Rent Recovery Act B appealed within fifteen days but A was put into possession on 13th May 1882 B's appeal came on for hearing and was dismissed on 13th June 1883 B instituted this suit to recover possession of the land on 25th July 1883 *Held* that B's suit was not time barred under s 44 of the Rent Recovery Act *PADSHA v TIRUVEMBALA*

[I L R, 9 Mad, 479]

s. 40

See DEPUTY COLLECTOR, JURISDICTION OF

[I L R, 16 Mad, 323]

1—s 50—Petition sent by post—Presentation of plaint—A petition sent by post is not a substitute for the presentation of a plaint as

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865)—continued.

with 44 M. COLLECT. APPARAH v. NARAYANA . . . I. L. R., 15 Mad., 47

22. *Form of pottah—Pottah of rent letters by in, list contract—Pottah is not of rent.* In a land not suit to of rent acceptance of a pottah and execution of a muchalka by the defendant, it appeared that the pottah was granted to the defendant, and the pottah in the pottah was in full of the plaintiff in 1849 a pottah for seven years, which provided for payments in kind, but after the expiry of that period the rent had always been paid in money, though the pottah was not. It was described in the pottah as a pottah for rent, and the defendant also claimed to be entitled to rent. Held that it was necessary to determine the nature of the pottah in the absence of rent, and that an agreement that the rent should continue to be paid in money did not bind the landlord accordingly was not entitled to recover a pottah pottah for payment of rent in kind. *POTTAH v. NARAYANA* . . . I. L. R., 14 Mad., 52

s. 12.

See JURISDICTION OF REVENUE COURT—MADRAS REGULATIONS AND ACTS.

[7 Mad., 53]

See LANDLORD AND TENANT—ABANDONMENT, RESIGNMENT, OR SURRENDER OF LEASE. . . . I. L. R., 13 Mad., 124

[I. L. R., 15 Mad., 67]

See TYPES OF PROOF—LANDLORD AND TENANT . . . I. L. R., 16 Mad., 271

1. *“Tenants”—Term not restricted to agricultural tenant—s. 12 of the Rent Recovery Act provides that tenants ejected without due authority by landlords may bring a summary suit before the Collector to obtain reinstatement with damages. Held that the word “tenants” is not restricted to agricultural tenants only, but includes the permanent holder of a mitti. SUDHARAYA v. SRINIVASA* . . . I. L. R., 7 Mad., 580

See BASKARASAMI v. SIVASAMI

[I. L. R., 8 Mad., 108]

2. *Issue of pottah, Effect of—*

Receipt of rent—Suit for possession—Ejectment.—On the true construction of s. 12 of the Madras Rent Recovery Act (Madras Act VIII of 1865) the issue of a pottah is not intended to do more than prevent the arbitrary ejectment of tenants, and does not give them a right of permanent occupancy; and it did not therefore prevent a plaintiff, though he had issued pottahs to the defendant, from recovering the lands from him, and he was not bound merely to receive rent. *SATHIANAMA BHARATI v. SARAVANANAGI AMMAL* . . . I. L. R., 18 Mad., 286

s. 13—*Persons entitled to proceed under Act—Attachment, Validity of.*—A granted two villages in perpetuity to B under a deed, reserving a certain rent to himself which was to be recovered “according to the Act” if it fell into arrear.

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865)—continued.

The rent remained unpaid for two years, and A obtained an attachment for the whole arrear under the Madras Rent Recovery Act. Held (1) that A was entitled to proceed as landlord under the Madras Rent Recovery Act; (2) that the attachment held good for such amount of rent as was recoverable under that Act. *RAMASAMI v. Collector of Madras*, I. L. R., 2 Mad., 67, discussed. *RAMACHANDRA v. NARAYANASAMI*

[I. L. R., 10 Mad., 229]

s. 14—*Suit for rent—Limitation.*

When a tenant has executed a muchalka specifying the date on which the various instalments of rent are payable, the period of limitation for a suit by the landlord for the rent is to be computed from such date. *VENKATAGIRI RAJAH v. RAMASAMI*

[I. L. R., 21 Mad., 413]

s. 15.

See SMALL CAUSE COURT, MOFFESSIL—JURISDICTION—WLONGPUL DISTRICT.

[I. L. R., 22 Mad., 457]

ss. 15, 17.—Where a landlord has distrained for rent, and the distraint has been set aside under the provisions of the Rent Recovery Act, the landlord is debarred by s. 17 from taking further proceedings under the Act in respect of the arrears for which the distraint was made. *RAMA v. CHESALVARIYA* . . . I. L. R., 7 Mad., 429

1. s. 17—*Attachment and sale of the tenant's interest in the land for arrears of rent—Declaration of invalidity of attachment.*—When default has been made in the payment of rent, and the salable interest of the defaulting tenant in the land is attached, the attachment cannot be declared invalid in a summary suit under s. 17 of the Rent Recovery Act. *THAYAMMA v. KULANAYALU* . . . I. L. R., 12 Mad., 465

2. and ss. 18 and 49—*Suit to recover produce illegally distrained for rent—Wrongful distraint.*—The defendants, the landlords, distrained certain produce, the property of plaintiff, their lessee, in view to selling it for alleged claims for rent. The Sub-Collector, finding that the formalities required by the Act had not been observed, removed the attachment and directed the restoration of the property. The defendants having refused to restore the property, the plaintiff brought this suit under Madras Act VIII of 1865 to recover the value of the produce. Held that such wrongful withholding of the property, being an act in direct disregard and defiance of the Act, did not constitute a cause of action triable by a summary suit under that Act. *SRINIVASA v. EMPERUMANAR PILLAI*

[I. L. R., 2 Mad., 42]

3. and s. 20—*Summary suit for wrongful distraint—Limitation—Cause of action.*—A refusal to restore property improperly distrained under the Rent Recovery Act (Madras Act VIII of 1865) after the attachment has been set aside and the property ordered to be restored under s. 17 of the Act, is not a cause of action upon which a

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865)—concluded

Confirmation of it by summary suit sued for rent

to a refusal to execute the muchaka to the delivery of which judgment had been given within the meaning of s 72 and that the requirements of that section had been complied with VENKATA RAMAYYA v SUBBANNA I L R., 23 Mad., 585

s 78

See SUPERINTENDENCE OF HIGH COURT—
CIVIL PROCEDURE CODE s 623

I L R., 18 Mad., 451
I L R., 17 Mad., 298

s 78

See LIMITATION ACT 1877 s 14
I L R., 12 Mad., 467

See RIGHT OF SUIT—LANDLORD AND
TENANT SUITS CONCERNING
I L R., 10 Mad., 388

Limitation—Suit to recover property wrongfully distrained—The plaintiff sued to recover certain property wrongfully distrained by the defendant who was his landlord or in the alternative for its value The defendant had tendered no pottah to the plaintiff but the distraint had taken place professedly under the Rent Recovery Act The suit was not brought within six months from the date of the wrongful distraint Held that the suit was not barred under Rent Recovery Act s 78 GOUDAN v RANGAYA GOUDAN I L R., 20 Mad., 449

MADRAS REVENUE RECOVERY ACT (MADRAS ACT II OF 1864)

See MADRAS ADMARI ACT 1864 s 10
I L R., 7 Mad., 494

See CASES UNDER SALE FOR ARREARS OF
REVENUE

ss 1, 2, 3, 38, 39—Landholder—
Defaulter—Pottah allowed to stand in name of an
agent—Fetionnel—Notice—Sale—Where a land

the pottah stands will pass the landholder's interest to the purchaser at the revenue sale ZAMORIN OF
CALICUT v SITARAMA I L R., 7 Mad., 405

1. s. 2—Remedies of assuages from
Government of land revenue—Land security for

1

the arrears of revenue due and under s. 2 of Madras
Act II of 1864 the land itself is security for the
revenue due on it and they can therefore bring

MADRAS REVENUE RECOVERY ACT (MADRAS ACT II OF 1864)—continued

the land to sale to discharge arrears accrued due
KRISHNASAMI v VENKATARAMA

I L R., 13 Mad., 319

separately assessed to revenue were held under one
pottah by K Default having been made by K in
payment of revenue one of such fields of which V
was the owner was attached under the Revenue
Recovery Act V claimed to have it released from
attachment on payment of the assessment due upon it
The claim was rejected and the field sold Held in
a suit by V to set aside the sale that the sale was valid
SECRETARY OF STATE FOR INDIA v NARAYANAN
SITARAMA v NARAYANAN I L R., 6 Mad., 130

s 11 Attachment of gathered crops
belonging to a tenant—Right of Government to
conveyance can

account of which the arrears of revenue have accrued
KRISHNA CHADAGA v GOVINDA ADIGA

I L R., 17 Mad., 404

s 36—Extension of time by Govern-
ment for payment of balance of purchase money—

SONAYA PILLAI v KALAMEGAM
I L R., 5 Mad., 130

s 38

See BENAMI TRANSACTION GENERAL
CASES I L R., 19 Mad., 489

1. Sale for arrears of revenue
—Confirmation of sale after cancellation—When a
Collector has passed an order under s 38 of Madras
Act II of 1864 setting aside a sale for arrears of
revenue he cannot subsequently confirm the sale.
KALIAPPA GOUNDEY v VENKATACHALLA THEVAN
I L R., 20 Mad., 253

land. It was pleaded that his purchase was made
benami for the persons from whom the defendant
derived title Held that the Madras Revenue
Recovery Act s 38 did not debar the defendant
from raising this plea and that the averments on
which it was based having been proved the suit
should be dismissed SUBBARAYAN v ASHUTATHA
UPADESATTAR I L R., 20 Mad., 484

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865) —continued.

required by s. 50 of Madras Act VIII of 1865.
MOPARTI PITCHI NAIDU v. VUPPALA KONDAMMA
[8 Mad., 138

2. — and s. 69—*Plaint—Amendment—Irregular procedure—Joint petition—Order to file separate plaints—Limitation.*—A landlord, having tendered pottahs to his raiyats which were not accepted by them, distrained, for rent due under the pottahs tendered, on the 10th of March 1882. On the 13th of March thirteen raiyats presented a joint petition to the Head Assistant Collector complaining of the landlord's acts. This petition was referred to the Tehsildar for report, and not treated as a plaint under Act VIII of 1865 (Madras); but subsequently, having been brought before the Deputy Collector for orders, it was treated as a joint plaint under the said Act, and the petitioners were directed by that officer each to file a separate plaint. Thirteen plaints were accordingly filed on the 27th of May. Held that under s. 50 of the Act, which allows irregular plaints to be amended at the discretion of the Collector, the petition of the 13th March, which contained all the necessary allegations, could be treated as a plaint capable of amendment; and that the order of the Deputy Collector directing the petitioners to file separate suits was an amendment within the meaning of that section. Held also that by the provisions of s. 69, which provides that substantial justice shall not be defeated by want of form or irregularity in procedure, the said order, even if irregular, having done substantial justice, ought not to be set aside. *ATTIPAKULA MENAPPA v. DASANAI CHENCHU NAIDU* . I. L. R., 7 Mad., 138

1. — s. 51 and s. 18—*Summary suit to set aside distraint—"Within thirty days"—Sunday—General Clauses Act (X of 1897), s. 10(1)—General Clauses Act (Madras) (Act I of 1891), s. 11.*—Suits to set aside a distraint under s. 15 of the Rent Recovery Act (Madras), 1865, were filed on the thirty-first day after the distraint complained of, the thirtieth day being a Sunday, and the Court closed. On objection being taken that the suits were barred under ss. 18 and 51 of the Act, —Held (1) that the suits were filed in time; (2) that the provisions of the Limitation Act do not extend the period of thirty days limited by ss. 18 and 51 of the Rent Recovery Act (Madras), 1865, for bringing a summary suit to set aside a distraint; neither does s. 10 of the General Clauses Act nor s. 11 of the General Clauses Act (Madras), inasmuch as the latter Acts are not retrospective; and (3) that there is a generally recognized principle of law under which parties who are prevented from doing a thing in Court on a particular day, not by any act of their own, but by the Court itself, are entitled to do it at the first subsequent opportunity. *SAMBASIVA CHARI v. RAMASAMI REDDI* . I. L. R., 22 Mad., 179

2. — *Presentation of plaint—Acceptance by Court of plaint sent by post.*—K sent a plaint by post to a revenue officer, who was on tour, and, in obedience to an order issued by such officer to pay batta within a certain date, presented himself and paid the amount demanded within thirty

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865) —continued.

days from the date of the cause of action. Held that the suit was instituted within the time prescribed by s. 51 of the Rent Recovery Act. *Moparti Pitchi Naidu v. Vuppala Kondamma*, 6 Mad., 136, approved and distinguished. *SANKARANARAYANA v. KUNJAPPA* . I. L. R., 8 Mad., 411

3. — *Suit to enforce acceptance of improper pottah—Limitation.*—A landlord sued his tenants in the Court of a District Munsif to enforce acceptance of pottahs and the execution of muchalkas by them, and to recover arrears of rent. These suits were filed more than thirty days after tender of the pottahs, which were found to contain certain improper stipulations. Held the suit was not barred by the rule of limitation in Madras Rent Recovery Act, s. 51. *EASWARA DOSS v. PUNGA VANCHARI*
[I. L. R., 13 Mad., 361

ss. 57, 66—*Ex-parte decision.*—*Seemle*—The terms of s. 57 of Act VIII of 1865 are wide enough to justify a Collector in treating as *ex-parte* a defendant not appearing on the day to which the hearing of the suit may have been adjourned under s. 66 of the Act. *SCUBRAMANIAM PILLAY v. PERUMAL CHETTY* . 4 Mad., 251

1. — s. 69—*Appeal, Computation of time for.*—Time required to file copy of decision.—An appeal under Madras Act VIII of 1865 must be presented within thirty days from the date of the decision appealed against. The appellant is not required to file a copy of such decision with his appeal. *IN THE MATTER OF THE PETITION OF MOHIDIN HUSEIN SAHEB* . 8 Mad., 44

2. — and s. 18—*Deduction of time occupied in obtaining copy of judgment appealed against—Limitation Act (1877), s. 12.*—A tenant whose property had been distrained for arrears of rent sued under Rent Recovery Act, s. 18, by way of appeal against the distraint. The Revenue Court decided in his favour. The landlord preferred an appeal under s. 69 more than thirty days after the date when the decision was pronounced. He claimed that the time occupied in procuring a copy of the judgment appealed against should be deducted in the computation of the thirty days' period of limitation. Held that the appellant was not entitled to have the deduction made, the provisions of s. 12 not being applicable to an appeal filed under s. 69 of the Madras Rent Recovery Act, and that the appeal was barred by limitation. *ARKAPPA NAYANIM v. SITHALA NAIDU*
[I. L. R., 20 Mad., 476

s. 72—*Refusal to execute muchalka—Suits for rent.*—By s. 72 of the Rent Recovery Act, when a judgment is given for the delivery of a muchalka, if the person required by the decree to execute such muchalka shall refuse to do so, the judgment shall be evidence of the amount of rent claimable from such person, or a copy of the judgment under the hand and seal of the Collector shall be of the same force and effect as a muchalka executed by the said person. A landlord, having tendered a pottah and obtained

**MADRAS REVENUE RECOVERY ACT
(MADRAS ACT II OF 1884)—concluded.**

in 1885, to recover the house from the defendant

the plaintiff had twelve years to sue, and that the sale was *ultra vires* RAMAN & CHANDAN

[I. L. R., 15 Mad., 219]

tor and the purchaser at the sale *Venkata v Chengadu*, I. L. R., 12 Mad., 168, and *Silakandan v Thandamma*, I. L. R., 9 Mad., 460, followed. The mere fact that one of the plaintiffs, in a suit brought to set aside a sale under Madras Act II of 1864, was a minor, was held not sufficient to save the limitation bar under s. 59 of Madras Act II of 1864, when an alleged fraud affecting the sale came to the knowledge of the other plaintiffs who were majors and were jointly interested with the minor more than six months prior to the institution of the suit s. 8 of the Limitation Act being inapplicable to such cases NARAYANAN NAMUDURI & DAMODARAN NAMUDURI I. L. R., 17 Mad., 189

**MADRAS REVENUE RECOVERY
AMENDMENT ACT (MADRAS ACT
III OF 1884)**

s. 1, cl. 5.

See BENAMI TRANSACTION—GENERAL
CASES I. L. R., 18 Mad., 469

**MADRAS SALT ACT (MADRAS ACT
IV OF 1889)**

ss. 46 and 47.

See ESCAPE FROM CRSTODY

[I. L. R., 19 Mad., 310]

**MADRAS TOWN LAND REVENUE
ACT (XII OF 1851) AND MADRAS
ACT VI OF 1867**

XII of 1851, ss. 1, 17—*Mad Act VI of 1867*, ss. 4, 31—*Penal assessment of revenue—Jurisdiction of Civil Court—Limitation*—The plaintiff was in occupation of certain land in Madras, and in May 1853 he received a

**MADRAS TOWN LAND REVENUE
ACT (XII OF 1851) AND MADRAS
ACT VI OF 1867—concluded.**

notice from the Collector stating that the land belonged to the Government, and that a penal assessment of Rs 100 a month was imposed upon him for the current month, and calling upon him to pay that sum within three days, failing which his property would be distrained, and stating that, if he did not vacate the land at once, a further penal assessment would be imposed and levied every month. In June 1856 a like notice was served upon the plaintiff calling upon him to pay Rs 300, the amount chargeable up to date. The plaintiff, having appealed to the Board of Revenue without success, paid under protest the penal assessment in various sums amounting together to Rs 604 1 0. He now sued to recover that amount and prayed for a declaration of his title. *Held* by BODDAM, J. that the High Court had jurisdiction to entertain the suit in respect of the claim for money, but that the suit was barred as to so much of it as had been paid more than six months before the institution of the suit. *Held* by SHEPHERD, Offg. C.J., and MOORE, J. (affirming the judgment of BODDAM, J.), that the land belonged to Government and the plaintiff was in occupation without title, and that it was accordingly competent to Government to impose the assessment. In order to enable one having paid money under protest to recover money so paid, it is necessary for him to show that the payment was made under illegal coercion. MUTHAYYA CHETTI & SECRETARY OF STATE FOR INDIA I. L. R., 22 Mad., 100

**MADRAS TOWNS IMPROVEMENT
ACT (MADRAS ACT III OF 1871)**

See ESTOPPEL—ESTOPPEL BY CONDUCT.

[I. L. R., 2 Mad., 104]

See LIMITATION ACT, 1877 ART. 120 (1871,

ART. 118) I. L. R., 3 Mad., 124

s. 1—*Washerman—Artisan*—A washerman is not an artisan within the meaning of Madras Act III of 1871. *Ex parte Poo-ven*

[I. L. R., 1 Mad., 174]

s. 9—*Power of Governor in Council to dismiss elected Municipal Commissioner*—S. 9 of the Towns Improvement Act (Madras Act III of 1871) provides that the Governor in Council may remove an elected Municipal Commissioner for misconduct. In a suit for damages brought against the Secretary of State by a Municipal Commissioner for wrongful removal from office,—*Held* that, the defendant not having proved misconduct, the plaintiff was entitled to damages. VIJAYA RAO & SECRETARY OF STATE FOR INDIA

[I. L. R., 7 Mad., 486]

s. 38—*Tax due before approval of Government to Act—Illegal levy of tax—Omission to give notice*—Plaintiff sued the Municipal Commissioners for the town of Bellary for a certain sum, alleged to have been illegally levied by them from him as his trade and profession tax. The sanction of the Governor in Council, under s. 23 of Madras Act III of 1871, was obtained on the 4th

MADRAS REVENUE RECOVERY ACT
(MADRAS ACT II OF 1804)—continued.

By the custom of a zamindari its tenants brought their produce to the threshing-floor, where it was divided, *inter alia*, among the village servants. The holders of the zamindari altered this system, directing the tenants to bring their produce direct to the granaries of the holders, who promised to pay the village servants their fees from the said granaries. These fees having been only partly paid, the village servants complained to the Government revenue officials, who applied to the holders for payment of the arrears demanded for the same being ultimately issued under s. 52 of the Revenue Recovery Act (Madras), 1904. The holders thereupon paid the amount of the arrears under protest, and a year later filed a suit against the Secretary of State to recover the money so paid. *Held* that the holders had made themselves liable for the fees, and the Collector was entitled to proceed under s. 52 of the Revenue Recovery Act (Madras), 1904, to recover them. *Held* also that, inasmuch as the suit had not been brought within six months of the time when the alleged cause of action last arose, it was barred under s. 59 of the Revenue Recovery Act (Madras), 1904. **ONN C. SECRETARY OF STATE FOR INDIA IN COUNCIL.**

[I. L. R., 23 Mad., 571

[illegible]

[1. 1. 11., 17 Med., 13-1

as to ss. 41 and 42—See for arrears of revenue. Land subject to taxes. Purchaser's title not subject to arrears. *Her's right*.—Where land is sold to a bona fide purchaser of revenue due by the purchaser and arrears, and the landholder claims to set aside the sale on account of the purchaser not paying the arrears, the purchaser's title is not subject to the claim. *Held* that, reading ss. 41 and 42 of *Mutlak Act* of 1904 together, the purchaser's title was not subject to the claim. The contracts referred to in ss. 41 of the Act are those which do not create a charge on the proprietary right in the land sold. *RAMAN C. MAHAJAN I. L. R., 11 Mad., 330*

1. ——— s. 52 — Karmam in a permanently-settled zamindari—Revenue servant.—The Karmam in a permanently-settled zamindari is a village servant employed in revenue duties within the meaning of the Madras Revenue Recovery Act, s. 52. COLLECTION OF NORTH ANDOR & EAST RUMI

[L. L. R., 15 Mad., 35]

2. - and s. 50—Madras Hereditary Village Officers' Act (Madras Act III of 1895), s. 21—Emoluments due to village officers—Demand for payment under s. 52 of Revenue Recovery Act—Payment under protest—Suit to recover amount paid—Legality of demand—Limitation.—

1. *—* a. 50—*Limitation—Sale of land subject to mortgage—Suit by a mortgagee.*—Land which was subject to a mortgage having been sold for arrears of revenue under Act II of 1861 (Madras), the mortgagee's assignee sued to enforce the terms of the bond by sale of the land more than six months after the date of the sale of the land. *Held* that the suit was barred by s. 50 of the said Act. *VELLAYA v. VILAYA* I. L. R., 10 Mad., 62

I. L. R., 10 Mad., 82

2. ————— Suit to set aside a sale for arrears of revenue—*Fraud—Limitation Act, 1877, art. 35.*—Suit, in July 1885, to set aside a sale of land of the plaintiff, sold in July 1884 as if for arrears of revenue under Act II of 1864 (Madras), on the ground that the sale had been brought about by fraud and collusion between the purchaser and the village officers; the plaintiff had knowledge of the alleged fraud more than six months before suit. Held that the Law of Limitation applicable to the case was s. 79 of Act II of 1864, and not s. 95 of the Limitation Act, and that the suit was therefore barred. *Venkatagatti v. Subramaya, I. L. R., 9 Mad., 157*, explained. *Bijj Nath Sahu v. Lala Sital Prasad, 2 B. L. R., F. B., 1*, and *Lala Mohan Lal v. Secretary of State for India, I. L. R., 11 Cal., 200*, considered. *VENKATA v. CHENGADU, I. L. R., 12 Mad., 168*

3. Abkari notification referring to that Act—Sale to recover sum due from an abkari renter.—Limitation for suits to recover land so sold.—The right of selling toddy at certain places was put up to auction by the Collector under a notification which required that payment should be made at fixed periods, and that the purchaser should take out licenses as therein provided, failing which the shops concerned might be re-sold, and any loss accruing to Government recovered under the Madras Revenue Recovery Act. The plaintiff bid at the auction, and

**MADRAS TOWNS IMPROVEMENT
ACT (MADRAS ACT III OF 1871)**
—continued

was illegal *HANUMAYYA v ROUFELL*
(I L R, 8 Mad., 64

etc., to arrest without warrant, or to lay an information before a Magistrate and apply for a summons or warrant. If he adopts the latter course, then ss 43 and 66 of the Criminal Procedure Code require that the information should be reduced to writing and given on oath or solemn affirmation, before any process is issued thereon. S 68 of the Code is limited to cases in which no complaint has been made, and the Magistrate, *proprio motu*, institutes a prosecution. *ANONYMOUS* 6 Mad, Ap, 50

s 165—Penal clause sanctioned by Government with respect to other bye laws not

Act III of 1871 by specifying the cases in which they shall be required, has impliedly declared they shall not be required, are in violation of the Act. *ANONYMOUS* 8 Mad, Ap, 3

s 168—Suit on a contract against Municipal Commissioners—Notice—A suit was brought to recover from the Municipal Commissioners of Madura the balance of a sum of money due for lumber supplied under a contract duly made with them. Held that the plaintiff was entitled to sue on the breach of contract without giving notice such a suit not falling under the provisions of s 168 of the Towns Improvement Act (III of 1871). *MADRAS MAYANDI v McQUEEN* I L R, 2 Mad, 124

sch B, cl 4—“Pleader and Practising Vakil”—Magistrate’s Court Vakil—The words “Pleader and Practising Vakil” used in cl 4, sch B of the Madras Towns Improvement Act,

CITYALITY v ANSAMI . I L R, 8 Mad., 100

**MADRAS TOWNS IMPROVEMENT
ACT (MADRAS ACT III OF 1871)**
—concluded

sch C—Horse—Pony under thirteen hands—In the Madras Towns Improvement Act, 1871, the word “horse” includes a pony except when by reference to the number of hands, the articles of sch C show a contrary intention. Sch C is part of the Act. No tax is leviable under the Act on a four-wheeled carriage on springs drawn by one pony under thirteen hands. *VIZAGAPATAM MUNICIPALITY v WALKER* I L R, 5 Mad, 260

**MADRAS TOWNS NUISANCES ACT
(MADRAS ACT III OF 1839)**

See BENCH OF MAGISTRATES

(I L R, 18 Mad, 394

ss 3, 6, and 7—Common gaming house—Vacant unenclosed site—The accused were found gaming on a vacant site the property of the seventh accused. The seventh accused was convicted under the Madras Towns Nuisances Act ss 6 and 7, and the other accused under s 7. Held that the site in question was not a common gaming house and that the convictions were accordingly wrong. *QUEEN EXPRESS v JAGANNAYAKULU*

(I L R, 18 Mad, 46

ss 3 and 11

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE

(I L R, 18 Mad, 490

I L R, 22 Mad, 238

**MADRAS VILLAGE COURTS ACT
(MADRAS ACT I OF 1889)**

s 13

See SMALL CAUSE COURT MOPPUSIL—JURISDICTION—GENERAL CASES

(I L R, 13 Mad, 145

proviso 3—“Land” includes “house”—In Madras Act I of 1889 s 13 proviso 3, the word “land” includes land covered by a house, and consequently a suit for house-rent unless due under a written contract signed by the defendant, is not cognizable in a Village Munsif’s Court. *NARAYANAMMA v KAMAKSHANNA*

(I L R, 30 Mad, 21

s 73

See MUNSHI, JURISDICTION OF.

(I L R, 31 Mad, 363

“MAFEE BIRT” TENURE

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(19 W. R., 211

MAGISTRATE

See CASES OF THE BENCH OF MAGISTRATES.

See CHRISTIAN PUBLICATION, ORDER OF
CIVIL COURT AS TO.

MADRAS TOWNS IMPROVEMENT ACT (MADRAS ACT III OF 1871)
—continued.

July 1871, with authority to levy the tax from 1st May 1871. Plaintiff alleged that no notice under s. 61 of the Act had been served upon him, that the levying the tax was illegal, as the approval of Government was obtained three months after the commencement of the official year, and that the Act could not have retrospective effect. *Held* on a reference that the levy from the plaintiff was illegal. **BATES v. MUNICIPAL COMMISSIONERS FOR THE TOWN OF BELLARY** . . . 7 Mad., 249

— s. 51.—*Notice by owner of claim to remission of house-tax.*—The notice which an owner of property must give in order to entitle himself to a remission of the house-tax is an annual notice. **PURUSHOTTAMA v. MUNICIPAL COUNCIL OF BELLARY** . . . I. L. R., 14 Mad., 467

1. — s. 58.—*Liability for carriage and horse-tax.*—*Temporary residence.*—*Payment of tax where person resides permanently.*—The defendant, a Judge of the Small Cause Court at Madura, visited Dindigal once a year and remained there for more than thirty days each year. The defendant took with him to Dindigal his horses and carriages which he used there, and in respect of which he paid the taxes imposed by law to the Municipality of Madura, where he resided. In a suit by the Municipality of Dindigal to recover the tax payable in respect of the same horses and carriages, *Held* that the defendant was not liable. **SNATH v. MCQUIHAE** 7 Mad., 332

2. — and ss. 59-62.—*Liability to professional tax.*—*Fiscal statutes.*—*Construction of statutes.*—In construing enactments creating fiscal obligations, provisions declaring the liability to the tax are to be distinguished from those providing for its imposition. Machinery for the imposition of the tax may be independent of the obligation of the taxpayer. The duty of paying profession tax under s. 58, Madras Act III of 1871, is independent of the obligations of registration and taking out a certificate which precede it in the same section. *Per HUTCHINS, J.*—S. 61 is not to be construed so as to prevent the Commissioners from adding to the list new names or persons not in the town at the beginning of the year. **VICE-PRESIDENT OF THE MUNICIPAL COMMISSION, CUDDALORE v. NELSON** . I. L. R., 3 Mad., 129

— ss. 61, 62.—*Maxim "Quod fieri non debet factum valet."*—The Vice-President of a Municipal Commission, purporting to act under the provisions of s. 61 of the Towns Improvement Act, 1871, which empowers the Commissioners to prepare and revise the list of tax-payers, and to issue notices of assessment to persons liable to the profession tax, issued a notice of assessment to D, although no case of emergency existed, within the meaning of s. 27 of the Act, enabling the President, or, in his absence, the Vice-President, to exercise the powers vested by the Act in the Commissioners. *Held* that the insufficiency of the notice of assessment was no answer to a charge under s. 62 of the Act against D for exercising his profession without paying tax. **MUNICIPAL COMMISSIONERS OF MANGALORE v. DAVIES**

[I. L. R., 7 Mad., 65]

MADRAS TOWNS IMPROVEMENT ACT (MADRAS ACT III OF 1871)
—continued.

1. — s. 62.—*"Person"*—*Joint trade.*—*Tax.*—In s. 62 of the Madras Towns Improvement Act, 1871, the word "person" must be construed to include any company or association or body of persons, whether incorporated or not, where such construction is not repugnant to the context. Where, therefore, two undivided Hindu brothers carried on a joint trade in one shop and tax had been paid by one brother, *Held* that no tax was payable by the other brother. **MUNICIPAL COMMISSIONERS OF NEGAPATTAM v. SADAYA** . . . I. L. R., 7 Mad., 74

2. — and s. 169.—*Profession tax.*—*Non-payment of.*—*Offence.*—*Nature of.*—*Prosecution.*—*Limitation.*—A complaint having been laid (on the 26th March 1885), under s. 62 of Act III of 1871 (Madras), against O for having exercised his profession for more than two months in the official year 1884-85 in a Municipality without paying the tax in respect thereof, the Magistrate dismissed the complaint, on the ground that the prosecution was barred by s. 169 of the Act, inasmuch as five months had elapsed since the last payment in respect of the tax became due. *Held* that the complaint, if laid within three months from the close of the official year, or, if O ceased to exercise his profession before the close of the official year, within three months from such date, was not barred by s. 169 of the Act. **OOTACAMUND MUNICIPALITY v. O'SHAUGHNESSY**

[I. L. R., 9 Mad., 38]

— ss. 64, 72.—*Tax on animals.*—*License.*—*Extent and limit of.*—N having taken out a license under the provisions of the Towns Improvement Act, 1871, for a bullock, the bullock died and N bought another bullock, but did not take out a second license. N was convicted for keeping this bullock without a license. *Held* (by TURNER, C.J., and HUTCHINS, J., BRANDT, J., dissenting) that the conviction was right. **MUNICIPAL COMMISSIONERS OF MANNARGADI v. NALLAPA** . . . I. L. R., 8 Mad., 327

— s. 85.—*Suit to recover money illegally levied as tax on profession.*—S. 85 of Madras Act III of 1871 is not a bar to a suit to recover money wrongfully levied as a tax because such so-called tax had no legal existence. There is no provision in that Act for levying any tax described in s. 57 of the Act at all otherwise than by the prescribing of the machinery for its levy in ss. 58-61. If that machinery is not applied, no liability to pay such tax can arise. Where the Municipal Commissioners of a town had not determined on the imposition of a tax of that description till 22nd April of the official year for which such tax was imposed, and the list of persons to be taxed for that year was not completed till 14th July of the same year, and notice to A of his assessment under such tax was not given him till 8th October in that year, *Held* that the tax had no legal existence, and that A was entitled to recover from the Commissioners money which they had collected from him as and for such so-called tax. **Bates v. Municipal Commissioners for the Town of Bellary**, 7 Mad., 249, followed. **LEMAN v. DAMODARAYA** . I. L. R., 1 Mad., 158

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12. ———— If a Court call
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of—When the High Court calls for an explanation
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one purporting to sign on his behalf ROOP LALL
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1 APPEARANCE OF JURISDICTION ON
PROCEEDINGS

Magistrate with power to do
particular act or make particular order—
Order for maintenance under s 536 of Criminal Pro
cedure Code—Where the law empowers Magistrate

MAGISTRATE—continued.

2. GENERAL JURISDICTION—continued.

such a personal disqualification, is forbidden by law to try a particular case, though he may be authorized generally to try cases of the same class; cannot be said, with respect to that case, to be a Court of competent jurisdiction, and his orders are not covered by the saving provisions of s. 537. *SUBHAKA PANDA v. QUEEN-EMRESS* I. L. R., 23 Cal., 328

18. Magistrate personally interested—Criminal Procedure Code (1882), s. 555

—Magistrate giving evidence before himself.—Where a Magistrate, in whose Court a complaint of rioting and mischief had been filed, made a personal inspection of the locus in quo,—*Held* that by so doing he had made himself a witness in the case, and had thereby rendered himself incompetent to try it. *Held* further that, where a Judge is the sole Judge of law and fact in a case tried before himself, he cannot give evidence before himself or import matters into his judgment not stated on oath before the Court in the presence of the accused. *QUEEN-EMRESS v. MANIKAM* I. L. R., 19 Mad., 263

19. Disqualification of Magistrate to try case—Criminal Procedure Code (1882), ss. 502, 540, and 555—Examination of witnesses.

—Where a Magistrate before whom a complaint was made held an inquiry under s. 202 of the Criminal Procedure Code for the purpose of ascertaining the truth or falsehood of the complaint before moving the accused, examined witnesses on both sides, and, after holding such inquiry, summoned the accused, examined witnesses on both sides, and, after a short adjournment, examined a witness called by himself, and found the accused guilty under s. 341 of the Penal Code,—*Held* that there is nothing in the Criminal Procedure Code which disqualifies a Magistrate who holds a preliminary inquiry under s. 202 from trying the case himself, and that the provisions of s. 555 had no application, inasmuch as the Magistrate had not initiated or directed the proceedings against the accused person, nor taken an active part in the arrest or collection of evidence against such person. *Held* also that the Magistrate was strictly within his rights under s. 540 of the Criminal Procedure Code in receiving fresh evidence after conviction on both sides had been taken and the case adjourned for judgment, inasmuch as the case was still a pending case, when such evidence was taken. In the *MATTER OF ANANDA CHUNDER SINGH v. BASU MOHUN* I. L. R., 24 Cal., 167

20. Magistrate expressing opinion in a report after local investigation, Competence of, to hold the trial—Transfer, Ground of—Criminal Procedure Code, 1898, s. 202.

—The fact that a Subordinate Magistrate expressed his opinion in submitting a report in a case referred to him for local investigation under s. 202, Criminal Procedure Code, is no bar to his holding the trial on an order by the District Magistrate making over the case to him for that purpose. *ANANDA CHUNDER SINGH v. BASU MOHUN*, I. L. R., 24 Cal., 167, referred to. *BABU MADHUB ROY v. ROSABAI GOSSAM*

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MAGISTRATE—continued.

2. GENERAL JURISDICTION—continued.

21. Disqualification of Magistrate to try case—Witnesses—Omission to record statement of accused under Code of Criminal Procedure (1882), s. 364.—Where a Magistrate before whom an accused person is brought omits to record, as provided by s. 364 of the Criminal Procedure Code, statements made by the accused, and so becomes thereby make himself a witness, and so does not disqualify from trying the case. *QUEEN-EMRESS v. PATRA CHAND* I. L. R., 24 Cal., 499

22. Disqualification of Magistrate—Magistrate holding local investigation—Witnesses.—A Magistrate, by going to view a place for the purpose of understanding the evidence, does not thereby make himself a witness in the case, and render himself disqualified from trying it. In the MATTER OF THE PETITION OF LATI

23. Magistrate becoming witness, Competence of, to try case—Local investigation by Magistrate trying case—Information not obtained from inspection.—Where a Magistrate visited the scene of occurrence of the alleged offence and not merely noted the various features thereof of importance to a proper decision of the case, both parties being present on the occasion, but obtained information outside the scope of such inspection as regards the presence of the accused and based his judgment thereon,—*Held* that the Magistrate had thus made himself a witness, and could not try the case; and that he should be examined as a witness at the re-trial. *SATRI DULAI v. BARNES* 13 C. W. N., 607

3. TRANSFER OF MAGISTRATE DURING TRIAL.

24. Summary jurisdiction—Transfer—Criminal Procedure Code, ss. 56 and 222

—*Further*—The petitioner had been convicted by Mr. C, the Assistant Commissioner of Kamroop, in the exercise of a summary jurisdiction, under s. 222 of Act X of 1872. This officer was, in the year 1872, in charge of the Forehand Division in the district of Seebanagar, "with first-class powers and powers under s. 222" of the Act. In 1874 he proceeded on tour to England, and on his return in 1875, was posted to the district of Kamroop, and invested with the powers of a Magistrate of the first class. *Held* that s. 56 of Act X of 1859 did not apply, and that Mr. C had no summary jurisdiction in Kamroop; *per* *MARNEY, J.*, on the ground that, by the terms in which the Government had conferred that jurisdiction on Mr. C, it had in effect "directed," within the meaning of s. 56 of Act X of 1872, that he should not exercise that jurisdiction anywhere but in Seebanagar; *per* *MARNEY, J.*, on the ground that the office to which Mr. C was appointed in Kamroop was not equal to, or higher than, that which he had held in Seebanagar. *Quære per MARNEY, J.*—Whether the posting of

MAGISTRATE—continued**2 GENERAL JURISDICTION—continued**

12 ——— Disqualification of Magistrate to try a case in which he is personally interested—*Criminal Procedure Code (Act X of 1882), s 555—Statements made out of Court*—The accused was convicted of reckless and furious

13 ——— Disqualifying interest of Magistrate—*Criminal proceedings—Irregularity—Personally interested—Criminal Procedure Code, 1882 s 555*—Where a District Magistrate as prosecutor initiated and directed the proceedings against certain accused persons who were charged by him with having committed offences punishable under ss 143 and 150 of the Penal Code,

private individual" but include such an interest as the District Magistrate must have had under the above circumstances in the conviction of the accused. **GRISH CHUNDER GHOSH & QUEEN EMPRESS**

[I L R, 20 Cal, 857]

14 ——— Disqualification of Magistrate or Judge—*Personal interest—Criminal Procedure Code (1882) s 555—Bombay District Municipal Act (VI of 1873), s 84—Municipal offence*—The mere fact that a Magistrate is the Vice-President of a District Municipality and Chair

MAGISTRATE—continued**2 GENERAL JURISDICTION—continued**

it at a meeting of the managing committee or other wise, he will be disqualified by reason of the existence of a personal interest, over and above what may be supposed to be felt by every Municipal Commissioner in the affairs of the Municipality. **QUEEN EMPRESS & PHEROZSHA PESTONJI L L R., 18 Bom, 442**

15. ——— Disqualification of Magistrate—*Criminal Procedure Code (1882) s 555—Personal interest*—The accused was a compounder in the employ of Treacher & Co. He was tried and convicted by the Presidency Magistrate of criminal breach of trust as a servant in respect of certain goods belonging to the company. It appeared that the Magistrate was a shareholder in the company which prosecuted the accused. *Held* that the Magistrate was disqualified from trying the case. As a shareholder of the company, he had a pecuniary interest however small in the result of the accusation and was therefore 'personally interested'.

[I L R, 20 Bom, 502]

16 ——— Incompetence of Magistrate who is Chairman of Municipality to try municipal cases—*Criminal Procedure Code (1882), ss 556 and 555—Any case—Meaning of—Prosecution under Bengal Municipal Act (Ben Act III of 1884)—Grounds for transfer of case*—An appeal against a conviction under s 217, cl 5 of the Bengal Municipal Act (Bengal Act III of 1884) was preferred to the District Magistrate who was also Chairman of the Municipality. On an application to the High Court for a transfer to the Court of some other Magistrate—*Held* that, apart from the question whether there was a disqualification under s 555 of the Criminal Procedure Code, the case was one which it was expedient should be transferred to another Court. *Per BANERJEE, J*—s 555 of the Criminal Procedure Code renders a Magistrate incompetent to try a municipal case if he is the Chairman of the Municipality. The words "try any case" in that section are comprehensive enough to include the hearing of an appeal. **NISTARINI DEBI & GHOSH**

[I L R, 23 Cal, 44]

17 ——— Disqualifying interest of Magistrate—*Criminal Procedure Code (1882), ss 537 and 555—Investigations preliminary to a trial—"Personally interested"—Court of competent jurisdiction*—Where investigations of the police preliminary to a trial are directed to a very considerable degree by a Magistrate, such Magistrate is personally interested in the case, and is dis-

MAGISTRATE—continued.
3. TRANSFER OF MAGISTRATES DURING TRIAL—concluded.

30. Head Assistant Magistrate

appointed Deputy Magistrate in same district—Criminal Procedure Code (1882), s. 350

Part-heard case.—A Head Assistant Magistrate, during the pendency of a criminal case of which the trial was almost finished, was appointed to the office of Deputy Magistrate in another part of the same district. The case was transferred by an order of the District Magistrate to the file of the Deputy Magistrate. Held that the Deputy Magistrate could proceed with the trial from the point at which he had arrived as Head Assistant Magistrate. QUREX-BARRASS v. ANOBAZAKAVAN JERIN

[I. T. R., 22 Mad., 47]

4. POWERS OF MAGISTRATES.

31. Magistrate of first class—Appellate Court—Finalment of punishment.—As an Appellate Court, a first class Magistrate has power to pass any sentence which a Subordinate Magistrate might have passed. ANOBAZAKAVAN JERIN

[I. T. R., 1 Mad., 54]

32. Magistrate of second class—Criminal Procedure Code, 1882, s. 206, and sch. III, arts. II, III (7)—Power to commit for trial—Case triable by Court of Session and Magistrate of the first class—Discharge of accused.—A complaint of an offence made punishable by s. 392 of the Penal Code was brought in the Court of a Magistrate of the second class, who had been invested with the powers described in s. 206 of the Criminal Procedure Code. The Magistrate passed an order directing that the enquiry should be held in his Court, and accordingly an inquiry was held under the provisions of Ch. XVII of the Criminal Procedure Code, and the accused was discharged. Held that powers conferred under s. 206 of the Criminal Procedure Code convey authority to carry into effect any of the provisions of Ch. XVII of the Code; that the procedure to be adopted under Ch. XVII is not confined to cases exclusively triable by a Court of Session, but is also applicable to cases which, in the opinion of the Magistrate concerned, ought to be tried by such Court; that the order of the Magistrate in the present case, directing enquiry to be held in his Court, must be taken to mean that, in his opinion, the case referred to was one which ought to be tried by a Court of Session; and that his order discharging the accused was therefore legal. RASUNYAN v. NINOTAK

[I. T. R., 6 All., 477]

33. Criminal Procedure Code, ss. 39, 235—Mistakenly, and hurt—Unjustified for more grievous hurt, and hurt—Power of Magistrate of first class conferred on Magistrate of second class during trial—Power to sentence as first class Magistrate.—On the 15th August 1881 a Magistrate of the second class began an enquiry in a case in which several persons were accused of robbing and of voluntarily causing grievous hurt. On the 6th September the powers of a Magistrate of the first class

34. Power to send boy to Reformatory School—Criminal Procedure Code, s. 399—Reformatory Schools Act, 1876, ss. 2, 5.—The Reformatory Schools being sent to reformatory for male juvenile offenders being sent to reformatory schools by Magistrates of the first class, and s. 399 of the Code of Criminal Procedure, 1892, so far as it authorizes a Magistrate not of the first class to direct that a male juvenile offender be sent to a reformatory, is repealed. Held therefore, when a second class Magistrate directed a boy to be sent to a reformatory under s. 399 of the Code of Criminal Procedure, that the order was illegal. QUREX-BARRASS v. JARRY

[I. T. R., 12 Mad., 84]

35. Joint Magistrate with Powers of Magistrate of District—Criminal Procedure Code, 1861, ss. 15, 23, and 16.—A Joint Magistrate who has been vested with the full powers of a Magistrate of a district, and to whom a case

36. Powers of Magistrates—continued.

37. Powers of Magistrates—continued.

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MAGISTRATE—continued**3 TRANSFER OF MAGISTRATE DURING TRIAL—continued**

Mr C to Kamroop, after his return from furlough, was a transfer from Seebaugor within the meaning of s 50 of Act X of 1872 IN THE MATTER OF PERSOO RAM BOROA

[I L R, 2 Calc, 117: 25 W R., Cr, 52

25 ——— Jurisdiction to complete trial—*Transfer of Magistrate while trying a case*—Mr M was appointed by the Local Government, under s 37 of Act X of 1872 a Magistrate of the first class under the designation of Joint Magistrate in the district of Meerut. He was subsequently appointed to officiate as Magistrate of the district of Meerut during the absence of Mr F or until further orders. While so officiating, he was appointed by a

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1880, and in the afternoon of that day, under the verbal order of Mr F, he proceeded to complete a criminal case which he had commenced to try while officiating as Magistrate of the district of Meerut. All the evidence in this case had been recorded, and it

and no longer and the effect of the order of the 10th July 1880 was to transfer him from the district of
Mr F
ad from
to that
district and could exercise no jurisdiction therein as a Magistrate of the first class, and that therefore the conviction of such accused persons had been properly quashed on the ground that Mr M had no jurisdiction EMPRESS OF INDIA v ANAND SARUP

[I L R, 3 All, 563

26. ——— Order passed by a Magistrate after his successor had entered upon

district "on the arrival of Kunwar Kamta Prasad"

commenced work as a Magistrate in that district. Held by AIRMAN, J., that the effect of the said order was that Babu Dilli Ram ceased to have jurisdiction on the arrival of Kunwar Kamta Prasad, but whether such arrival was his arrival within the limits of the district or at head-quarters was not clear from the order. EMPRESS OF INDIA v ANAND SARUP, I L R, 3 All, 513, referred to. BALWANT v KISHAN, I L R, 19 All, 114

MAGISTRATE—continued**3 TRANSFER OF MAGISTRATE DURING TRIAL—continued**

27. ——— Change of powers of Magistrate while case is proceeding—*Notification taking effect retrospectively*—On the 22nd of May 1878 a Deputy Magistrate, invested with third class powers only, sentenced an accused person to three months' imprisonment under s 417 of the Penal Code thus exercising second class powers. On appeal the Magistrate, on the 18th June, annulled the sentence and directed a new trial under s 284 of the Code of Criminal Procedure. On the 20th of June the Government issued a notification investing the Deputy Magistrate with second class powers to take effect from the 25th of March to the 31st of May 1878. Held that the notification did not render the Magistrate's order illegal as the Deputy Magistrate had no jurisdiction to exercise second class powers on the 22nd of May IN THE MATTER OF SUBGEE

[3 C. L. R, 261

23 ——— Appointment of Magistrate—*Time from which order of appointment dates*—An Assistant Magistrate convicted an accused on the 12th August, and by an order of even date such

first class powers upon the Assistant Magistrate from the moment it was made, it must be shown, before the District Magistrate's decision could be set aside, that the order of the Lieutenant Governor was signed before the conviction. *Quere*—Whether an order investing a Magistrate with first class powers is of any force, or amounts to an authority to exercise such powers, until the order has been officially communicated to the Magistrate. IN THE MATTER OF THE PETITION OF MOHAMED ESHAK CHANDRO MAHAWAT v MOHAMED ESHAK

[I L R, 8 Calc, 476

See EMPRESS OF INDIA v ANAND SARUP

[I L R, 3 All, 563

29 ——— Transfer of a Sub Registrar invested with powers of a Special Magistrate—*Criminal Procedure Code, s 40—Madras Police Act (XXIV of 1859) s 48*—A Sub Registrar, having been invested with magisterial powers with reference to offences under Act XXIV of 1859, was transferred from the place where he was officiating at the time he was so invested to another place, and there took on to his file and tried certain cases of offences under that Act. The District Magistrate having reported the cases for the orders of the High Court, the Court declined to quash his proceedings. QUEEN EMPRESS v VIRAKNA

[I L R, 15 Mad, 132

MAGISTRATE—continued**4 POWERS OF MAGISTRATES—continued**

OF THE PETITION OF SHANKAR ABAJI HOSHRING

(6 Bom, Cr, 89)

37 ——— Magistrate of third class —
Power to entertain charge in police report—Criminal Procedure Code, 1872 s 123—A Magistrate of the third class can try a person accused of a cognizable offence who has been forwarded to him by an officer in charge of a police station under s 123 of the Code of Criminal Procedure. *REG v LALA SHAMBEU*. 10 Bom, 70

TAJUMADDI LAHORY

(1 B L R., A Cr, 1 10 W R, Cr, 4

39 ——— Power of delegation of authority to receive complaints—*Criminal Procedure Code 1864 ss 23 (d) and 66 (h)—Order of Local Government, Effect of*—The power of a Magistrate to delegate the receiving of complaints under s. 66 (h), Code of Criminal Procedure, is not

order of the Local Government under the latter section can legally have retrospective effect. *MAC DONALD v RIDDELL*. 16 W. R., Cr, 79

40 ——— Power to refer case where no jurisdiction to try it—*Power to try case without complaint*—A Subordinate Magistrate has no power to refer a case which he has himself no

41 ——— Power to refer case sent for investigation by Civil Court—*Power to try*

VOL. III

MAGISTRATE—continued**4 POWERS OF MAGISTRATES—continued.**

case without complaint—Held that the Magistrate of a district to whom a case has been sent for investigation by a Civil Court has no power to refer it to a

42 ——— Magistrate trying case himself after referring it—*Trial without recording proceeding under s 38, Criminal Procedure Code,*

43 ——— Order for dismissal of complaint—*Discharge of accused—Code of Criminal Procedure, Act A of 1892 ss 203 209*—A Magistrate is not competent to pass an order of dismissal or discharge in consequence of the absence of the complainant in warrant cases not coming within s 209 of the Code of Criminal Procedure except in cases coming within the last clauses of s 253 of the same Code. *GOVINDA DASS v DULALL DASS*

(1 L R, 10 Cal, 87 13 C L R, 408

44 ——— Removal of case from file of Deputy Magistrate—*Criminal Procedure Code (Act XXV of 1861) s 66—Act VIII of*

(5 B L R., Ap, 45

45 ——— Power to refer to Subordi-

(10 BOM., 104

46 ——— Reference to District Magistrate—*Powers of second class Magistrate Committal to Court of Session—Criminal Procedure Code 1892 s 349*—An Assistant Magistrate

of opinion that the offence was one properly punishable under s 40 of the Penal Code, and one which

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4. POWERS OF MAGISTRATES - continued.

49. *Penal Code, s. 223*—Insulting a Magistrate—Criminal Procedure Code, s. 195.—The accused intentionally insulted a Village Munsif in the discharge of his magisterial duties: the Village Munsif did not prefer a complaint or sanction a prosecution, but a second class Magistrate charged the accused under Penal Code, s. 228, on a police report and convicted him. *Held* that the second class Magistrate was competent to try the complaint, and the conviction was right. *QUEEN-KABRESS v. VERKATASANI* [I. L. R., 15 Mad., 131]

70. *Criminal Procedure Code, s. 191*—Magistrate taking cognizance of an offence on his own personal knowledge—Right of accused to have the case transferred.—Where a Magistrate was found to have taken cognizance of an offence under cl. (c) of s. 191 of the Code of Criminal Procedure, *Held* that he had no power, on an application being made under the last clause of the section above-mentioned, to refuse to transfer the case. *QUEEN-KABRESS v. HAWTHORNE* [I. L. R., 13 A.M., 345]

71. *Criminal Procedure Code (Act X of 1882), s. 191 (c)*; *(Act V of 1893), ss. 190, 191*—Transfer of case or commitment to Sessions Court.—A Magistrate, when a valid objection is taken under Criminal Procedure Code, s. 191, that he cannot try a case, is not bound to transfer it, but may elect to commit the case to a Court of Session. *QUEEN-KABRESS v. FETIX* [I. L. R., 22 Mad., 148]

72. *Criminal Procedure Code, s. 454*—European British subject—Relinquishment of right to be dealt with as such a British subject—Trial by second class Magistrate.—A European British subject was prosecuted in the Court of a second class Magistrate, who was a Hindu, on a charge of mischief. The accused appeared and did not plead to the jurisdiction of the Magistrate, who proceeded with and disposed of the case. *Held* that the Magistrate had not acted *ultra vires*, since the accused had relinquished his right to be dealt with as a European British subject. *QUEEN-KABRESS v. BARTLET* [I. L. R., 16 Mad., 303]

73. *Criminal Procedure Code (Act X of 1882), s. 164*—*Offences Act (X of 1873), ss. 4, 5, 14*—False evidence.—A Magistrate, acting under Criminal Procedure Code, s. 164, has power to administer an oath, and a charge of perjury can be framed with regard to statements made before him on oath when he is so acting. *QUEEN-KABRESS v. ALAGE KORE* [I. L. R., 16 Mad., 421]

74. *Criminal Procedure Code (1882), s. 457*—Power of Magistrate to try an accused person for disobedience of a summons issued by him as Magistrate—Penal Code, s. 174—Construction of statute.—A Magistrate is not debarred by s. 457 of the Code of Criminal Procedure

4. POWERS OF MAGISTRATES—continued.

behalf and proceedings taken under such transfer whether void.—A Magistrate of the first class, not being a District Magistrate or a Subdivisional Magistrate, passed an order under s. 145 (1), Code of Criminal Procedure, and transferred the case to another Magistrate, and proceedings having been taken by the latter, the same was sought to be set aside as being without jurisdiction. *Held* that, although such transfer is not authorized by s. 192 (2) of the Code of Criminal Procedure, still the proceedings taken upon each transfer may be considered saved under the term of s. 192 (2), a Magistrate of the first class, even when duly empowered to transfer cases, can only transfer an enquiry or trial relating to an offence. *QUEEN-KABRESS v. CHIDDA, I. L. R., 20 A.M., 40*, explained and distinguished. *AKBAR ALI KHAN v. DOONI LAZ* [4 C. W. N., 821]

66. *Reference of case for trial of offence by subordinate Court*—Power of District Magistrate to issue warrants for arrest of other persons concerned in that offence.—Where cognizance was taken of an offence on a police report and the case was made over to a subordinate Magistrate, *Held* that, so long as the case connected with that offence remained with the subordinate Magistrate, no other Magistrate was competent to deal with it, and that applications for warrants against other persons was concerned in that offence should be made to the Magistrate before whom the case was and to no other Magistrate. *GOMADY SHEKH v. QUEEN-KABRESS* [I. L. R., 27 Cal., 978]

IN THE MATTER OF GOMADY SHEKH

[4 C. W. N., 827]

67. *Criminal Procedure Code, ss. 152, 153, 202, and 203*—Magistrate's power to direct a local investigation by the police—Complaint of an offence cognizable by a Magistrate—Extension of complaint.—S. 153 of the Code of Criminal Procedure (Act X of 1882) deals only with the powers of police officers. It confers no power or authority on Magistrates to direct a local investigation by the police, or call for a police report. It is not a proper course for a Magistrate, when a complaint is made before him of an offence of which he can take cognizance, to refer the complaint to a police officer. He is bound to receive the complaint, and after examining the complainant to proceed according to law. *IN RE AKKAPPA GRAM SITHAK* [I. L. R., 12 Bom., 161]

68. *District Magistrate's Power of, to order further enquiry*—Improper discharge—Sessions cases, further enquiry directed in—Criminal Procedure Code (Act X of 1882), ss. 436, 437.—It is competent to a District Magistrate who has issued a notice to an accused person who in his opinion has been improperly discharged to show cause under s. 436 of the Criminal Procedure Code why he should not be committed to the Court of Sessions, on cause being shown to order a further enquiry under the provisions of s. 437. *QUEEN-KABRESS v. MANIBADDIA MUNDU* [I. L. R., 18 Cal., 75]

MAGISTRATE—continued

4 POWERS OF MAGISTRATES—continued

55 ——— Reference by District Magistrate to Subordinate Magistrate—*Criminal Procedure Code, 1861 Ch XIX*—The Magistrate of a district or division is authorized under s 273 of the Criminal Procedure Code, to transfer proceedings under Ch XIX of that Code to his subordinates. *QUEEN v. ABDULLAH* 2 N. W. 401

56 Reference to full power
Magistrate—Subordinate Magistrate—Criminal
Procedure Code, 1861, Ch. XI—Held that the
Magistrate of a district before whom a criminal case
is brought either on complaint preferred directly to
such Magistrate or on the report of a police officer,

57 ——— Power to refer cases for inquiry—*Criminal Procedure Code, 1961 s 273*
—Under s 273 of the Criminal Procedure Code, a full power Magistrate may refer for enquiry to a Subordinate Magistrate (criminal cases that are *prima facie* any criminal case). The reference may be for inquiry or for trial by the Subordinate Magistrate, or with a view to commitment either to a Court of Session or the High Court. ANONYMOUS

58. Criminal Procedure Code 1860, ss 68 273—8 273 of the Criminal Procedure Code, 1860 applies only to criminal cases brought before the Magistrate of the district, and either on complaint preferred direct to such Magistrate or on the report of a police officer. There

merely authorizes him to take copies of the same without complaint and to issue summons or warrant.

ANONYMOUS 7 Mar. Ap. 2

59 Criminal Procedure Code
No. 273—Criminal Procedure Code
of Criminal
of a district
the Code to
wers AND
Mad. Ap. 6

NYMOUS

80 Criminal Procedure Code (Act XXV of 1861), s. 273—Grievous hurt—A Magistrate has no power, under s. 273 of the Code of Criminal Procedure, to refer a case of grievous hurt for trial to a Deputy Magistrate having only the power of a Subordinate Magistrate of the second class GABIND CHANDRA BISWAS v. HEM CHANDRA BARDER 6 B. L. R. 415.

MAGISTRATE—continued

4 POWERS OF MAGISTRATES—continued

61 _____ Reference of case
_____ to _____ Criminal

62 Criminal Pro-
cedure Code 1872 s 45—Pending inquiry into a
charge of house breaku g the second class Magistrate
of B Division was transferred to A Divis on
The case was transferred to his file by the Distr
Magistrate In the course of inquiry it appeared

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t ordered that

be committed
Magistrate if
second class
case to the S
District Mag
VENKANA

63 _____ Power of District Magistrate to refer case referred to him for trial.—Reference to full power Magistrate—Criminal Procedure Code 1861 s. 276.—It is competent for the Magistrate of a district to refer for trial to a full power Magistrate a case submitted under s. 276 of the Code of Criminal Procedure to such Magistrate of the district by a Subordinate Magistrate.
REG. MANGLA BHULLA 7 Bom. Cr. 69

64 _____ Power of, to pass
orders in cases before subordinate Court without
transfer to his own Court—Judicial enquiry before
issue of process Legality of—Code of Criminal
Procedure ss 192 & 203 and 204—Held, where
A. & A. in District Magistrate

85 _____ Code of Criminal Procedure (Act V of 1898), ss 192, cl (1) and (2), 529 (f), 145—Transfer, Order of, made by a Magistrate not empowered by law in that

MAGISTRATE—continued.
E. REFERENCE BY OTHER MAGISTRATES

the District Magistrate, and based on a misunderstanding of s. 271. *REG. v. GUNJA MIS HEGAK* [3 Bom., Cr., 29]

88. *Power to dispose of cases*—On reference by a District Magistrate, in a case submitted to him by a second class Subordinate Magistrate, under s. 277 of the Criminal Procedure Code, 1861, annulling as the Magistrate of the District none had power to dispose of cases under that section. *REG. v. KUNJO HANNO* [4 Bom., Cr., 8]

89. *ASSEMBLY* . . . 5 Mad., Ap., 43

89. *Criminal Procedure Code, ss. 195, 476*—Reference to "nearest Magistrate of the first class"—Sanction to Prosecution under Criminal Procedure Code, s. 195, and on the charge of perjury in a false complaint, and forasmuch his proceedings to the Deputy Magistrate and another division of the district who ordinarily had jurisdiction to try offences committed in the district under the Head Assistant Magistrate. *Held* that the Deputy-Magistrate had jurisdiction to try the charge. *QUEEN v. NAYAR* [I. L. R., 16 Mad., 461]

6. COMMITMENT TO SESSIONS COURT.

80. *Obligation to commit—Perjury committed in proceeding under s. 318, Criminal Procedure Code, 1861.*—A Magistrate has no jurisdiction to try, but must commit to the Sessions, a case of perjury committed before him in the course of a proceeding taken under s. 318 of the Code of Criminal Procedure. *QUEEN v. BIRONAK* [7 W. R., Cr., 104]

91. *Power to commit—Criminal Procedure Code, 1861, s. 171*—False evidence—*Proceedings inquiry.*—A Magistrate sent a witness before a Magistrate, in order that the latter might hold a preliminary investigation on a charge of giving false evidence, under s. 193 of the Penal Code. The Magistrate, without completing the investigation, sent the case back to the Magistrate, who finally committed the prisoner. *Held* that, while the Magistrate could have committed the prisoner himself under s. 173 of the Criminal Procedure Code, without sending him before the Magistrate on a charge of giving false evidence, investigation on a charge of giving false evidence had not irregularly in not himself completing the inquiry. Case remanded to the Magistrate accordingly. *QUEEN v. JAY MANOHAR* [3 B. L. R., A. Cr., 47; 12 W. R., Cr., 41]

92. *Civil Court for investigation under s. 171, Criminal Procedure Code, 1861.*—When a Civil or Criminal Court sends a case for investigation to a Magistrate under s. 171 of the Code of Criminal Procedure,

MAGISTRATES BY OTHER MAGISTRATES

—continued.

89. *Power to annul conviction in offence not triable by Subordinate Magistrate.*—*Reference to Criminal Procedure Code, s. 271.*—Where an appeal from a conviction by a Subordinate Magistrate of an offence triable by him, the District Magistrate of the district in which the offence was committed, is referred to him, the District Magistrate may, if he is of opinion that the conviction is not sustainable, annul the conviction. *Held* that the District Magistrate had power to annul the conviction. *REG. v. KUNJO HANNO* [4 Bom., Cr., 8]

81. *Reference to Magistrate with power to hear appeals.*—*Criminal Procedure Code, 1861, s. 270.*—Reference of cases by District Magistrate to Subordinate Magistrate. *Held* that a full-power Magistrate, the right conferred by an appeal, is not placed by the Code in the hands of the District Magistrate, and that the District Magistrate should not refer cases, under s. 270 of the Code of Criminal Procedure, to such Magistrate, but to the Magistrate of the district, to whom alone they are referred. *REG. v. BHAGU MIS SHANAI* [5 Bom., Cr., 47]

86. *Reference to Magistrate under s. 277, Criminal Procedure Code, 1861.*—*Power to annul conviction of a Magistrate.*—Where a case is referred to a Magistrate under s. 277 of the Code of Criminal Procedure, the Magistrate, if he is of opinion that the conviction is not sustainable, may annul the conviction. *Held* that a full-power Magistrate, the right conferred by an appeal, is not placed by the Code in the hands of the District Magistrate, and that the District Magistrate should not refer cases, under s. 270 of the Code of Criminal Procedure, to such Magistrate, but to the Magistrate of the district, to whom alone they are referred. *REG. v. BHAGU MIS SHANAI* [5 Bom., Cr., 47]

80. *Subordinate Magistrate.*—*Held* that a Subordinate Magistrate acted correctly, under s. 277 of the Code of Criminal Procedure, 1861, in referring a case, not to the District Magistrate of the district, but to the Assistant Magistrate in charge of the subdivision to which he was attached. In this matter of *Reference to Magistrate* [11 W. R., Cr., 7]

87. *Issue of circulars.*—Circulars issued by a District Magistrate for bidding all the Subordinate Magistrates from taking up cases, if they thought they should have to act under the provisions of s. 277 of the Criminal Procedure Code, 1861, were, on reference by a Sessions Judge, annulled as beyond the competence of

MAGISTRATE—continued

4. **POWERS OF MAGISTRATES—continued**
 (Act X of 1882) from trying an accused person under s. 174 of the Penal Code (XLV of 1860) for disobedience of a summons issued by him in his capacity of

was referred to *Queen Empress v Sarat Chandra Rakshit* I L R 16 Calc 766 followed *QUEEN EMPRESS v RAJJI DAJI*

[I L R, 18 Bom, 380]

75 ————— *Distress warrant*
 —Claim by third party to the property distrained —Criminal Procedure Code (1882) s. 336 —A Magistrate who has issued a distress warrant under s. 336 of the Criminal Procedure Code is not required by law to try, any claim which may be preferred to the ownership of the property distrained *QUEEN EMPRESS v GASPER* I L R, 22 Calc 935

76 ————— *Criminal Procedure Code (1882) s. 144—Executive powers of Magistrate—Order which might have the effect of interfering with the execution of a decree of a Civil Court—A District Magistrate has no power either under s. 144 of the Code of Civil Procedure or in his executive capacity to make an order for the rebuilding of a structure on private land which has been destroyed by fire*
THE QUEEN v CIVIL COURT IN THE MATTER OF THE PETITION OF PARMAT SINGH
 [I L R, 17 All, 485]

77 ————— *Criminal Procedure Code (Act X of 1882) s. 497—Transfer of case—Bail—Order admitting to bail—Power of*

RAIN JOSHI I L R, 22 Bom, 549

78 ————— *Criminal Procedure Code (Act I of 1898) s. 190 sub s (1) cls (a) and (c) and s. 191—Taking cognizance of offence by Magistrate upon receiving a complaint of facts—Right of the accused to claim a transfer—Penal Code (Act XLV of 1860) s. 193 and 195*

MAGISTRATE—continued

4 **POWERS OF MAGISTRATES—continued**
 he was not debarred by s. 191 of the Criminal Procedure Code from trying the case. No sanction under s. 193 of the Criminal Procedure Code is necessary for taking cognizance of an offence under s. 193 of the Penal Code when the alleged false evidence is said to have been fabricated not in relation to any proceeding pending, in any Court but in the course of an investigation by the police into the matter of an information received by them *JAGAT CHANDRA MOZUMDAR v QUEEN EMPRESS*

[I L R, 26 Calc, 786
 3 C W N, 491]

See *QUEEN EMPRESS v ABDUL RAZZAK KHAN*
 [I L R, 21 All, 109]
 and *QUEEN EMPRESS v FELIX*
 [I L R, 22 Mad, 148]

5 PREFERENCE BY OTHER MAGISTRATES

79 ————— *Power in case referred for enhancement of punishment—Criminal Procedure Code 1872 s. 46—Power to order committal for trial—A Magistrate to whom a case is referred for enhancement of punishment under s. 46 of the Criminal Procedure Code may order the committal of the case for trial by the sessions Court. IN THE MATTER OF CHINMAMBAIGADU*

[I L R, 1 Mad, 289]

80 ————— *Criminal Procedure Code*

81 ————— *Criminal Procedure Code 1872 s. 46—Return of case referred under s. 46—It is not competent for a Magistrate to return a case referred to him for trial to the sessions Court for trial.*

All orders passed after a case has been so returned are illegal. *DULA FAQUEER v BHAGIRAT SINGH*
 [9 C L R, 276]

82 ————— *Criminal Procedure Code*

MAGISTRATE—continued.

G. COMMITMENT TO SESSIONS COURT

—continued.

1672, s. 195.—A Magistrate enquiring into a case exclusively triable by the Court of Session is not bound to commit the accused person for trial, where the evidence for the prosecution, if believed, would end in a conviction, but is competent, if he discards such evidence, to discharge the accused. *MAJUMDAR v. JAVIA*. I. L. R., 5 All, 161

104.

Inquiry into case triable by Court of Session.—*Held*, where a Magistrate had tried a case exclusively triable by a Court of Session, and the conviction of the accused person and the sentence passed upon him at such trial were for that reason annulled by the Court of Session, but the proceedings held at such trial were not annulled, that such Magistrate might commit the accused person to the Court of Session on the evidence given before him at such trial. *JAYARAJA v. MAJUMDAR*. I. L. R., 2 All, 810

106.

Criminal Procedure Code (1895), s. 208—Duty of Magistrate enquiring into a case triable by the Court of Session to take the evidence of all the witnesses produced by the accused.—A Magistrate enquiring into a case under Ch. XXIII of the Code of Criminal Procedure is not empowered to frame a charge or make out an order for commitment until and after he has taken in all such evidence as the accused may produce before him for hearing. *QUEEN-EMRESS v. ANNAPI I. L. R., 20 All, 264*

106.

Criminal Procedure Code (1892), s. 253—Duty of Magistrate in dealing with the evidence produced in a case triable by a Court of Session.—*Held* that a Magistrate enquiring into a case triable by the Court of Session is not bound to commit simply because the evidence for the prosecution, if believed, discloses a case against the accused, but he is competent to consider the reliability of such evidence and to discharge the accused if he finds it untrustworthy. *JAYARAJA v. KATYAN SINGH*. I. L. R., 21 All, 265

107.

Criminal Procedure Code (1st X of 1892), s. 349.—Under s. 349 of the Criminal Procedure Code, a second class Magistrate transmitted a case to the District Magistrate, being of opinion that a more severe punishment was deserved than he was empowered to inflict. The District Magistrate returned the record to the second class Magistrate, directing him to commit the case to the Sessions Court. The committal directed was duly made. The High Court refused to interfere in the matter, holding that the proceedings of the second class Magistrate were not illegal, and that there was nothing done which took away the jurisdiction of the second class Magistrate to commit. *QUEEN-EMRESS v. CHANDU GOWDA*

QUEEN-EMRESS v. HAVIA TRIALAY
I. L. R., 10 Bom, 196
See *QUEEN-EMRESS v. HAVIA TRIALAY*
I. L. R., 14 Cal., 355
Criminal Procedure Code, 1882, ss. 209 and 210—Discharge of

109.

Penal Code, ss. 70, 411—Punishment not within jurisdiction of Magistrate.—Where an offence under s. 411 read with s. 70 of the Penal Code appears to be deserving of a greater punishment than the Magistrate trying it can award, the best course for him to adopt is to commit the accused for trial to the Court of Session. *QUEEN-EMRESS v. KHALAK*. I. L. R., 11 All, 393

110.

Power of commitment to Sessions Judge—Code of Criminal Procedure (1892), s. 251—Penal Code (1st X of 1892), s. 147—Circular order No. 9 of 6th Sep 1860.—*Held*, the commitment of a case under s. 147 of the Penal Code to the Court of Session by a Deputy Magistrate is not necessarily illegal. Although the case is shown to be triable only by a Magistrate under the second schedule of the Criminal Procedure Code, there is nothing in s. 254 of the Criminal Procedure Code which prevents a Magistrate committing a case under s. 147 of the Penal Code to the Court of Session, provided he finds that the accused has committed an offence, which, in his opinion, cannot be adequately punished by him. The instructions contained in Circular No. 9 of 6th September 1869 are to be read subject to the provisions of the Criminal Procedure Code. *QUEEN-EMRESS v. KATYAN SINGH*. I. L. R., 21 Cal., 429

7. WITHDRAWAL OF CASES.

111.

Withdrawal of case for trial—Criminal Procedure Code, 1872, s. 47, 323, 329.—The provisions of Act X of 1872, s. 323, 329, 329, apply when a Magistrate, after hearing part of the evidence in a case, ceases to exercise jurisdiction, and is succeeded by another, who has, and exercises, jurisdiction in such case. So s. 323 only applies to "enquiries" under Ch. XV, and only when the Magistrate is "unable" to complete the enquiry himself. But when a case under trial is removed under s. 47, the whole proceedings must commence *de novo* in the manner provided for in s. 45. *QUEEN v. KANAK MAHOMED*. 24 W. R., Cr., 53

112.

Power to withdraw case—Criminal Procedure Code, 1872, s. 47—Magistrates of districts should exercise the powers conferred on them by s. 47 of Act X of 1872 only when it is absolutely necessary for the interests of justice that they should do so; and when one of the parties to a

MAGISTRATE—continued.

G. COMMITMENT TO SESSIONS COURT

—concluded.

accused.—Magistrate, Obligation of, to commit when prima facie case is made out against accused. Under ss. 209 and 210 of the Criminal Procedure Code (Act X of 1892), a Magistrate holding a preliminary enquiry ought to commit the accused to the Court of Session when the evidence is enough to put the party on his trial, and such a case obviously arises when credible witnesses make statements which, if believed, would sustain a conviction. *QUEEN-EMRESS v. MAJUMDAR SATYAJIT*
I. L. R., 11 Bom, 372

MAGISTRATE—continued.**6 COMMITMENT TO SESSIONS COURT**
—continued.

the Magistrate to whom the case is sent must himself hold the investigation. **ANONYMOUS**

[8 Mad., Ap., 2]

93. ——— Commitment by Subordinate Magistrate in case not exclusively tri-

94. ——— Criminal Pro-

95. ——— Power to direct committal—Sessions Judge, Power of—A Magistrate of the district has no power to direct a Subordinate Magistrate to commit for trial in the Sessions Court accused persons who have been discharged by the Subordinate Magistrate, and such committal when made by the Subordinate Magistrate is illegal. The Sessions Court is the only authority empowered by law to direct a committal. **ANONYMOUS**

[4 Mad., Ap., 31]

96. ——— Commitment by Sessions Judge to Magistrate—Trial by Joint Magistrate—Where a Magistrate of a district who had discharged a prisoner was subsequently directed by the Sessions Judge to commit him for trial and the commitment was eventually made by the Joint Magistrate,—Held that such commitment was not illegal. Although ordinarily the order of the Ses-

97. ——— Reference to Ses-

cases to the High Court, as required by the Court's

MAGISTRATE—continued.**6 COMMITMENT TO SESSIONS COURT**
—continued

ruling in *Reg. v. Chanvareya bin Chanbasaya*, 5 Bom., Cr., 65. *Reg. v. KALA BIN HARI GAMA*

[7 Bom., Cr., 72]

98. ——— Criminal Procedure Code (Act VIII of 1869), s. 435—Case dismissed without sufficient inquiry—*Semle*—When a charge is dismissed by a Subordinate Magistrate without inquiry, a Magistrate has no power, under s. 435 of Act VIII of 1869, to order a trial before another Magistrate, but can only order a commitment to the Court of Session. *QUEEN v. HIRALAL SING*

[5 B. L. R., Ap., 48; 14 W. R., Cr., 8]

99. ——— Power to set aside finding where the Magistrate acted without jurisdiction—Criminal Procedure Code, 1869, s. 435—Where a Subordinate Magistrate of the first class acting without jurisdiction held a trial and acquitted the accused person under s. 255 of the Code

of 1869. **ANONYMOUS**. 4 Mad., Ap., 61

100. ——— Magistrate and Joint Magistrate, Power of—Preliminary enquiry.

101. ——— Power to direct

Code of Criminal Procedure. *Reg. v. BUSHANA BIN GANU*, 9 Bom., 189

102. ——— Courts of Head Assistant Magistrate and Deputy Magistrate—Trial of Munsif for extortion—*Mad. Reg. VI of*

pliedly, though not expressly, repealed. *IS THE MATTER OF THE PETITION OF NARAYANASAMI ATTAR*

[7 Mad., 182]

103. ——— Duty of Magistrate to commit—Magistrate making enquiry in Sessions Court—Discharge of accused—Criminal Procedure Code

MAGISTRATES—continued.

10. SPECIAL ACTS—continued.

payment of which a Magistrate has jurisdiction under s. 252. In a case under s. 35 a Magistrate has no option but to inflict the full fine of Rs500 if the offence be proved. Where a person was charged, as being the principal officer of a company, with having issued nine share warrants not duly stamped in respect of which the penalties claimed under s. 35 amounted to Rs4,500 and where it was contended that the infliction of such a penalty was beyond the jurisdiction of the Magistrate, which under the provisions of s. 32 of the Code of Criminal Procedure was limited to inflicting a fine of Rs1,000,—*Held* that the issue of each of the nine share warrants was a separate offence, and the fact that several offences have been committed, and therefore that the Magistrate's power to fine would extend to more than Rs1,000, was not affected by that section of the Code. *QUEEN-EMRESS v. MOORE* [I. L. R., 20 Cal., 676]

147. —Illegal confinement—*Deputy Magistrate, Power of*.—The offence of illegal confinement for more than ten days is triable only by the Court of Session or by the Magistrate of the district, but not by a Deputy Magistrate. *QUEEN v. KOURT MANJEE* [7 W. R., Cr., 13]

148. —*Madras Abkari Act*—*Mad. Act I of 1886, s. 43*—*Default by persons*—*bailed to appear before the Abkari Inspector*—*Procedure—Criminal Procedure Code (1862), s. 514*.—S. 43 of the *Madras Abkari Act* gives a Magistrate enforcing a penalty on the application of an abkari inspector jurisdiction to proceed in the same manner and with the same powers as if the default had been made by a person bailed to appear in his own Court. When an abkari inspector therefore, under the *Abkari Act*, s. 43, forwards a bail bond to a Magistrate in order that payment may be compelled of the penalty mentioned therein, the Magistrate should call upon the person liable to appear and show cause against such order being made, and should otherwise observe the procedure prescribed in Criminal Procedure Code, s. 514. *I. L. R., 18 Mad., 48*

149. —*Mad. Act III of 1865* (Offences against special and local laws)—*Offences under Act XIII of 1859*.—*Madras Act III of 1865* authorizes every Magistrate to take cognizance of offences against Act XIII of 1859. *ANONYMUS* [4 Mad., Ap., 64]

150. —*Criminal Procedure Code, 1861—Schedule—Mad. Act III of 1865*.—The jurisdiction conferred on Magistrates in the *Madras Presidency* by *Madras Act III of 1865* is not ousted by the schedule to the Code of Criminal Procedure as amended by Act VIII of 1869. *ANONYMUS* [7 Mad., Ap., 6]

151. —*Native Deputy Magistrate—Madras Police Act (XXIV of 1869), s. 50*.—By *Madras Act III of 1-65* a Native Deputy Magistrate has power to try police officers above the rank of a private charged with offences

MAGISTRATES—continued.

10. SPECIAL ACTS—continued.

under the *Madras General Police Act (XXIV of 1869)*, notwithstanding the proviso in s. 50 of the latter enactment. *ANONYMUS* [4 Mad., Ap., 54]

152. —*Repeal of Act XVI of 1874—Repeal, Effect of*.—The repeal of *Madras Act III of 1865* by Act XVI of 1874 has not deprived Magistrates in the *Madras Presidency* of jurisdiction over offences created by special and local laws thereby given to them. *REG. v. KANDAKORA* [I. L. R., 1 Mad., 223]

153. —*Criminal Procedure Code, 1872, s. 8—Act XVI of 1874—Special and local laws*.—*Madras Act III of 1865* declared every Magistrate in the *Madras Presidency* authorized to take cognizance of every offence committed against any special or local law then in force in the said Presidency, notwithstanding any provision to the contrary in any Act or Regulation then existing, and also of any offence against any special or local law which might thereafter be passed, unless such law should make the offences to which it might refer punishable by some other authorities therein specially mentioned. The effect of this Act was to remove the restrictions imposed by special or local laws theretofore passed, and to enable Magistrates within the limits of their ordinary powers to deal with offences punishable under any such special or local law, notwithstanding the special or local law indicated a particular tribunal as alone competent to try such offences, and to confer upon them jurisdiction also in the case of any special or local laws that might be passed after the enactment of Act III of 1865, unless jurisdiction was in any such law specially conferred upon some other authority. S. 8 of the subsequent enactment, Act X of 1872 (the *Criminal Procedure Code*), limited the jurisdiction of Subordinate Magistrates over offences punishable under special and local laws, a third class Magistrate's jurisdiction being restricted to the trial of offences punishable under such laws with less than one year's imprisonment, while a second class Magistrate's jurisdiction was similarly restricted to the trial of offences punishable under such laws than three years' imprisonment. Act XVI of 1874, while repealing Act III of 1865, left unaffected the jurisdiction of the Subordinate Magistrate under that Act so far as it still remained in existence as limited by the provisions of s. 8 of Act X of 1872 (*Criminal Procedure Code*). *EMRESS v. ACHI* [I. L. R., 2 Mad., 161]

154. —*Mad. Reg. XI of 1869*.—*Village Magistrate—Fine for abusive language*.—A Village Magistrate has no jurisdiction to impose a fine upon a person who uses abusive language to the Village Magistrate in the course of a trial under s. 10, Regulation XI of 1869. *ANONYMUS* [5 Mad., Ap., 32]

155. —*Mad. Reg. IV of 1821—Village Magistrate—Sheep-stealing—Mad. Reg. XI of 1816*.—Sheep-stealing, when the value of the sheep is less than a rupee, is punishable by a Village Magistrate under Regulation IV of 1821 as a petty

MAGISTRATE—continued**7 WITHDRAWAL OF CASES—continued**

case applies to have it withdrawn from the Magistrate enquiring into or trying it and referred to another Magistrate the Magistrate of the district

Magistrate withdrawing such case from the District Magistrate trying it and referred it to another for trial the High Court set aside the order of the District Magistrate and of the Magistrate to whom such case was referred for trial and directed the Magistrate from whom it had been withdrawn to proceed with it **IN THE MATTER OF THE PETITION OF UMRAO SINGH : KAKIR CHAND**

[I L R, 3 All, 749]

113 ——— *Criminal Procedure Code 1872 ss 47 491—Act XI of 1874 s 6*—The provisions of s 47 of the Code of Criminal Procedure

[I L R, 8 Cal, 851]

114 ——— *Transfer of criminal case—Criminal Procedure Code (Act I of 1862), ss 17 528*—A Magistrate who is subordinate to a Subdivisional Magistrate is also subordinate to the District Magistrate within the meaning of Criminal Procedure Code s 528. Neither s 17 of the Code nor s 111 can be so construed as to take away the special power conferred by s 528. Where therefore a Joint Magistrate transferred a complaint from the second class Magistrate of A to the Taluk Magistrate of B, *Held* that the District Magistrate had jurisdiction under s 528 of the Code, to withdraw the case from the Magistrate of A and to re-transfer it to the Magistrate of B. **K. THAMAN CHETTI v. ALAGIRI CHETTI**

I L R, 14 Mad, 399

115 ——— *Criminal Procedure Code s 528—Village Munsif*—A Village Munsif not being a Magistrate under the Criminal Procedure Code, a Joint Magistrate has no power under the Criminal Procedure Code, s 528 to withdraw a case from a Village Munsif and transfer it for disposal to a second class Magistrate. **MADAPAKAYACHARI v. SUBBA RAO**

I L R, 15 Mad, 84

116 ——— *Criminal Procedure Code (Act I of 1862) s 528*—An order under s 528 of the Criminal Procedure Code (Act I of 1862) transferring a case for enquiry or trial from

MAGISTRATE—continued**7 WITHDRAWAL OF CASES—concluded.**

one Magistrate to another ought not to be made without notice to the accused. **QUEEN EMRESS : SADA SHIV NARAYAN JOSHI**

I L R, 22 Bom, 544

8 RE TRIAL OF CASES

117 ——— *Fresh trial after discharge—Criminal Procedure Code, 1861, ss 68 and 220—Discharge of accused—Institution of fresh proceedings*—Where an accused person is discharged by Deputy Magistrate under s 225 of the Code of Criminal Procedure after a preliminary enquiry, the Magistrate of the district may proceed against him afresh under s 68 of the Criminal Procedure Code. **IN THE MATTER OF THE PETITION OF PANJAJ MAJUMDAR**

6 B L R, Ap, 6

[14 W R, Cr, 68]

118 ——— *Orders under*

L. CAVALLO NARAYAN

I L R, 5

9 REVIEW OF ORDERS

119 ——— *Committing order, Power to cancel*—Where a Deputy Magistrate has once made an order transferring a case for trial to the Magistrate he has no power to cancel the order and replace the case on his own file. **QUEEN : CHANDER SARKAR ROY**

12 W R, Cr, 18

120 ——— *Power to vary sentence*—A Magistrate has not authority to vary any sentence he may have once passed on a prisoner and which has been finally recorded. **REG : TOOKIA**

1 Bom, 5

121 ——— *Power to revive order which has been quashed*—On the 7th of June 1881 the Assistant Commissioner of Hylakandi, in

August 1881 the Assistant Commissioner reviewed the order and having come to the conclusion that the

of the Criminal Procedure, *Held* that the Magistrate having, on the 25th of August 1881, set aside his order of the 7th of June 1881, and struck the case off the file, he had

MAGISTRATES—continued.

10. SPECIAL ACTS—continued.

jurisdiction given to a second class Magistrate by s. 83 of the Registration Act, 1877, as amended by Act XII of 1879. *QUREN-KHARRAS v. KHARRAS* [I. L. R., 7 Mad., 347]

178. — Salt laws—Criminal Procedure Code, 1861, s. 21—Cases under local laws.—A Magistrate is bound, with reference to s. 21 of the Code of Criminal Procedure, to proceed in the investigation of cases arising under a special law such as the Salt Law, according to all the provisions of the Code of Criminal Procedure. *QUREN v. AMBOO AZEER KHAN* . 14 W. R., Cr., 36 Stamp Act, 1869, s. 43—

179. — Magistrate authorized by Collector to prosecute.—A Magistrate, who has been authorized by the Collector of a district, under s. 43 of the Stamp Act, to prosecute offenders against the stamp laws, is not competent also to try persons whom he prosecutes. The Collector should appoint some person other than a Magistrate to conduct the prosecutions. *EXPRESS v. GANGADHAR BURNIO* . I. L. R., 3 Cal., 622 [2 C. L. R., 179]

180. — Whipping—Sentence of whipping—Code of Criminal Procedure (Act X of 1872) (Act X of 1882), ss. 2 and 32.—A person appointed a Magistrate of the second class under Act X of 1872 is incompetent, since the coming into force of Act X of 1882, to pass a sentence of whipping, unless he is specially empowered so to do according to the provisions of s. 32 of the latter Act. *EXPRESS v. BHAGYATA HAYAI* [I. L. R., 7 Bom., 303]

181. — Witness—Money deposited as expenses of witness, Order as to—Order to credit money deposited under Criminal Procedure Code, 1861, s. 223, to Government.—A Magistrate has no jurisdiction to order a sum of money, deposited under s. 228 of the Code of Criminal Procedure, for the refund of which an application was made, to be credited to Government. *ANONYMOUS* [6 Mad., Ap., 9]

MAHOMEDAN COMMUNITY.

See HINDU LAW—CUSTOM—MAHOMEDANS. [I. L. R., 3 Cal., 694
See JURISDICTION OF CIVIL COURT—CASTE. [I. L. R., 13 Bom., 429
I. L. R., 20 Bom., 190]

MAHOMEDAN LAW.

See GRANT—CONSTRUCTION OF GRANTS. I. L. R., 16 Mad., 257
See HUSBAND AND WIFE. [I. L. R., 21 Bom., 77
See PUNDANISHIN WOMEN. [I. L. R., 12 Mad., 380]

Ecclesiastical Law.

See RELIGION, OFFENCES RELATING TO. [I. L. R., 7 All., 461]

MAGISTRATES—continued.

10. SPECIAL ACTS—continued.

171. — Post Office Acts, XVII of 1854 and XIV of 1856, s. 48—Magistrate, obligation to, to commit.—On a reference by a Sessions Judge in reviewing the monthly criminal returns, it was held that a conviction and sentence recorded by a Magistrate under s. 50 of Act XVI of 1851 (corresponding with s. 48 of the Act of 1856) were illegal, as the Magistrate had no jurisdiction finally to dispose of the case but was bound to commit it for trial before the Court of Session. *THE v. ARMAVAY YAMAY BHANABKAR* . 3 Bom., Cr., 8

172. — Railways Act (XVIII of 1859, ss. 17, 35)—Hom. Reg. XII of 1857, ss. 5, 41.—By s. 35 of the Railway Act, district police officers in the Presidency of Bombay could punish, to the extent of the power conferred upon them in petty offences, any offence made punishable under the Act of 1857 authorizing the appointment of district police officers, and s. 41 of the same Regulation (defining the limits of their jurisdiction), being both repealed by Act XVII of 1859.—It was held that a subordinate Magistrate had no jurisdiction to impose a fine under s. 17 of the Railway Act. *REG. v. THIMAVAY ISHWAN* [3 Bom., Cr., 54]

173. — Magistrates of all grades are, under Act III of 1855, competent to try persons charged with offences under s. 25 of the Railway Act, XVIII of 1859. *ANONYMOUS* . 4 Mad., Ap., 8

174. — full-power Magistrate.—It was held that a conviction by a Magistrate with full powers under s. 26 of the Railway Act was illegal for want of jurisdiction. *REG. v. LAKSHMAN BAIJAI* . 3 Bom., Cr., 10

175. — Railways Act (IX of 1890), s. 125.—Permitting cattle to stray upon a railway—Discretion of Magistrate.—When the owner of cattle, which have been allowed to stray upon a railway, is prosecuted under the Railway Act, 1890, s. 125, cl. 1, the Magistrate is bound to ascertain whether the person charged was himself guilty. *QUREN-KHARRAS v. AMBOO* . I. L. R., 18 Mad., 228

176. — Registration Act, 1869, ss. 81 and 95—Commitment to Sessions Judge.—It was held that the commitment of the accused to the Court of Session by a Magistrate for trial on a charge under s. 91 of the Registration Act (XX of 1869) was legal as being within the powers of the Magistrate. The Sessions Court was accordingly directed to try the accused. *REG. v. KAVOJIRAY BIRN HANAYATRAY* [5 Bom., Cr., 7]

177. — Registration Act, 1877, s. 83—Criminal Procedure Code, s. 27—Jurisdiction of second class Magistrate.—S. 29 of the Code of Criminal Procedure, 1882, does not affect the

MAGISTRATE—continued**10 SPECIAL ACTS—continued**

theft, but a sentence of fine by a Village Magistrate in such cases is illegal *QUEEN v BOYA LINGA*

[1 L R, 5 Mad, 268]

156 ——— Merchant Seaman's Act (I of 1859), s 83—*European British subject—Criminal Procedure Code 1872 s 72*—A Magistrate is not empowered to try a European British subject under cl 5 s 83 of Act I of 1859 (The Merchant Shipping Act) *See s 2 of the Criminal Procedure Code, 1872*

ANONYMOUS

[4 Mad, Ap, 33]

ANONYMOUS . . . 7 Mad, Ap, 32

157 ——— N.W.P. & Oude Municipal

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MAGISTRATE—continued.**10 SPECIAL ACTS—continued.**

183 ——— ss 380, 456, 459
—*Lurking house-trespass by night with aggravating circumstances*—A Deputy Magistrate has no power to convict of theft (s 280 Penal Code), where the offence charged is lurking house trespass by night with aggravating circumstances (ss 448 and 459 Penal Code) but must commit on the latter charge *PURAN TELER v BURROO DONG*

[8 W R, Cr, 5]

184 ——— s 471—*Forged document—Power to commit for forgery produced before the Collector*—Where a forged document is put in evidence before the Collector, the power of commitment rests with the revenue authorities and does not under any circumstances extend to the Magistrate *GOVERNMENT v HUNGESSER SEIN*

[1 Ind Jur, O S, 11]

185 ——— s 486—*Possession—Goods with counterfeit trade mark not intended to be sold within jurisdiction*—A Magistrate has jurisdiction to try an offence under s 486 of the Penal Code if the accused be shown to be in possession of goods with a counterfeit trade mark for sale or any purpose of trade or manufacture though the goods be not intended to be sold within jurisdiction

186 ——— s 509—*Making indecent gestures to annoy*—Offences coming under s 509 of the Penal Code are triable by the Magistrate of the district only *KULKEE v INDOOHO*

[7 W R, Cr, 52]

187 ——— Police Act (V of 1861)—*Criminal Procedure Code, 1861 s 133—Offences*

188 ——— s 29—*Deputy Magistrate—Power of fine*—A Deputy Magistrate exercising the full powers of a Magistrate has jurisdiction, under s 29 Act V of 1861 to fine police officers for violation of duty *ANONYMOUS*

[4 W R, Cr, 2]

189 ——— *Magistrate—Sessions Judge*—A Magistrate only and not a Sessions Judge has power to try cases under s 29 Act V of 1861. *INDROBER THABA v QUEEN*

[1 W R, Cr, 5]

170 ——— Post Office Act XIV of 1866, s 47—*Subordinate Magistrate*—A subordinate Magistrate has jurisdiction to try a prisoner for an offence under s 47 of the Indian Post Office Act (Act XIV of 1866) *PEG v VITHU BAI MALLU*

[5 Bom, Cr, 36]

[1 L R, 19 All, 465]

186 ——— s 509—*Making indecent gestures to annoy*—Offences coming under s 509 of the Penal Code are triable by the Magistrate of the district only *KULKEE v INDOOHO*

[7 W R, Cr, 52]

187 ——— Police Act (V of 1861)—*Criminal Procedure Code, 1861 s 133—Offences*

188 ——— s 29—*Deputy Magistrate—Power of fine*—A Deputy Magistrate exercising the full powers of a Magistrate has jurisdiction, under s 29 Act V of 1861 to fine police officers for violation of duty *ANONYMOUS*

[4 W R, Cr, 2]

189 ——— *Magistrate—Sessions Judge*—A Magistrate only and not a Sessions Judge has power to try cases under s 29 Act V of 1861. *INDROBER THABA v QUEEN*

[1 W R, Cr, 5]

170 ——— Post Office Act XIV of 1866, s 47—*Subordinate Magistrate*—A subordinate Magistrate has jurisdiction to try a prisoner for an offence under s 47 of the Indian Post Office Act (Act XIV of 1866) *PEG v VITHU BAI MALLU*

[5 Bom, Cr, 36]

MAHOMEDAN LAW—ACKNOWLEDG-

MENT—continued.

speaks of A as his father, the acknowledgment of sonship is complete and formal, and, under the Mahomedan law, conclusive against all parties. *Next*

[20 W. R., 164

15.

Legitimation of offspring by acknowledgment.—The acknowledgment of a natural son by a Mahomedan as his son gives him the status of a son capable of inheriting as a legitimate son, unless certain conditions exist. *Mohamed Azmat Ali Khan v. Laili Begum*, I. L. R., 8 Cal., 422, referred to. Whether the offspring of an adulterous intercourse can be legitimated by any acknowledgment is an open question. *SARAKAT HOSSEIN v. MAHOMED YUSUF*

[I. L. R., 10 Cal., 683
I. L. R., 11 I. A., 31

16.

Effect of acknowledgment of sonship.—Held by *PETTERAY, C.J.*, that, according to the Mahomedan law, the effect of an acknowledgment by a Mahomedan that a particular person, born of the acknowledged wife before marriage, is his son in fact, though the acknowledged person never lived with him as a legitimate son or intended to give him the status of a son capable of inheriting as legitimate, unless conditions exist which make it impossible that such person can have been the acknowledged son in fact. *ASHRUFODDOWLA AHMED KHAN v. HYDER KHAN*, 11 Moore's I. A., 94; *Mahomed Azmat Ali Khan v. Laili Begum*, I. L. R., 8 Cal., 422; and *Sarakat Hossein v. Mahomed Yusuf*, I. L. R., 10 Cal., 683, referred to. In a suit for possession, by right of inheritance, of a share of the property of a deceased Mahomedan by a person alleged himself to be a son of the deceased, the defendant pleaded that the plaintiff was not a son, but a step-son, having been born of the deceased's wife before her marriage. The plaintiff filed certain letters and other documents in which the deceased in express terms referred to him as his son; and he contended that these references amounted to acknowledgments of him as a son made by the deceased, which, under the Mahomedan law, entitled him to inherit, under the legitimate son. *Held* by *PETTERAY, C.J.* (Brodie dissenting), that the acknowledgment by the deceased of the plaintiff as his son in fact conferred upon the latter the status of a legitimate son capable of inheriting the deceased's estate, although the evidence showed that the deceased never treated him as a legitimate son, or intended to give him the status of legitimacy. *Held* by *BRODIE, J.*, contra, that the documents above referred to did not show more than that the deceased regarded the plaintiff as his step-son; that the plaintiff was never called his son except by courtesy and in the sense in which a European would ordinarily describe his step-son as his son; and that there was no sufficient evidence of his acknowledgment from which an inference was fairly to be deduced that the deceased ever intended to recognize the plaintiff and give him the status of a son capable of inheriting. *Sarakat Hossein v. Yusuf*

MAHOMEDAN LAW—ACKNOWLEDG-

MENT—continued.

Attaining decision of High Court in Hossein Khan v. Esat Hossein, Esat Hossein v. Hossein Hossein Khan

6 W. R., 5

11.

Acknowledgment of children as sons.—The acknowledgment of children by a Mahomedan as his son, giving them the status of a son capable of inheriting as legitimate birth, may, without proof of his express acknowledgment of them, be inferred from his treatment of such children, provided that certain conditions regulating this relationship are absent. The question whether such acknowledgment should be presumed or not, depends on the circumstances of each particular case. *ASHRUFODDOWLA AHMED KHAN v. HYDER KHAN*, 11 Moore's I. A., 94, referred to and followed. *Mahomed Azmat Ali Khan v. Laili Begum*

[I. L. R., 8 Cal., 422
I. L. R., 11 I. A., 8

12.

Pretension of marriage.—According to Mahomedan law, mere cohabitation without proof of marriage or of acknowledgment is not sufficient to raise such a legal presumption of marriage as to legitimate the offspring. Marriage and acknowledgment may be presumed, but the presumption must be one of fact, and, as such, subject to the application of the ordinary rules of evidence. A subsequent marriage, so far from raising the presumption of a prior marriage, *prima facie* negates the presumption. *ASHRUFODDOWLA AHMED KHAN v. HYDER KHAN*

[7 W. R., P. C., 1:11 Moore's I. A., 94

13.

Illegitimacy of father's acknowledgment of son.—In *legitimacy of son.*—Where in a transaction with a third party A describes B as his son, and B

14.

Validity of acknowledgment of son.—Where in a transaction with a third party A describes B as his son, and B

15.

MAHOMEDAN LAW—concluded

1 ———— *Extent of Religion*—Although the Mahomedan law, pure and simple, is part of the Mahomedan religion it does not necessarily bind all who embrace the Mahomedan creed. **MAHOMED SIDICK v AHMED ABDULLAH HAJI ABDASATAR v AHMED** I L R, 10 Bom, 1

2 ———— *Authorities on Mahomedan law, Value of—Rule of interpretation*—It is a

of the majority must be followed, and in the application of legal principles to temporal matters the opinion of Qazi Abu Yusuf is entitled to the greatest weight. **ABDUL KADIR v SALWA**

[I L R, 8 All, 149]

3 ———— *Doubtful point of law—Rule of interpretation—Practice of Court*—Where by writers of the highest authority on the law of a particular sect a point of law is admitted to be doubtful regard should be had to the practice of the Courts. **DAIM v ASOONA BEBE** 2 N W, 380

MAHOMEDAN LAW—ACKNOWLEDGMENT.

1 ———— *Acknowledgment by father—Effect of acknowledgment of son or daughter*—According to Mahomedan law, the acknowledgment of a father renders a son or daughter a legitimate child and heir unless it is impossible for the son or daughter to be so. **OMIDA BIBEE v JONAB ALI**

[5 W R, 132 1 Jur, N S, 143]

FUZEELUN BEBEE v OMDAH BEBEE

[10 W R, 463]

WUHERDUN v WUSEB HOSEIN 15 W R, 403

2 ———— *Effect of acknowledgment of son*—According to Mahomedan law the acknowledgment of the father renders the son a legitimate son and heir, whether the mother was or was not lawfully married to the father. **DUS MOODEFN AHMED v ZUHOORUN** 10 W R, 45

3. ———— *Proof of legitimacy—Inference*—The Mahomedan law allows legitimacy to be inferred from circumstances without direct proof. **MAHOMED GOURUR ALI KHAN v HARRATUNISSA** 2 W R, 52

Upheld on the facts by the Privy Council. **HARBEBOLJAR v GOURUR ALI KHAN**

[18 W R, 523]

4 ———— *Proof of legitimacy—Marriage—Inference*—According to the Mahomedan law, the legitimacy or legitimation of a child of Mahomedan parents may be presumed or

MISSA BEGUM

[3 W R, P. C, 37 8 Moore's I A, 133]

MAHOMEDAN LAW—ACKNOWLEDGMENT—continued

5 ———— *Presumption as to cohabitation—Legitimacy of issue*—The Mahomedan law is very scrupulous in bastardising the issue of any connexion in which it can be shown by presumption that there has been cohabitation and acknowledgment of paternity. **ROSHEN JEHAN v FAKET HOSEIN FAKET HOSEIN v ROHUN JEHAN** 5 W R, 6

Affirmed by Privy Council in **HAJAJOORUNISSA v LOWSHAN JEHAN** I L R, 3 Cal, 184

[28 W R, 38 L R, 3 I A, 291]

6 ———— *Presumption of*

sumption, the basis of proving the impossibility of the marriage is on the other side. **ROK BUDUN v WAI GOWHER SHAH** 3 W R, 187

7 ———— *Legitimacy of son—Acknowledgment by a Mahomedan that a certain person is his son is not prima facie evidence of the fact which may be rebutted but establishes the fact acknowledged. Such acknowledgment is valid when the ages of the parties admit of the relationship between them and where the descent of the party acknowledged has not been already established from another.* **IN THE MATTER OF THE PETITION OF NAJIBUNNISSA** 4 B L R, A C, 55

JAIBUN v UJERBOONISSA 12 W R, 497

affirming on appeal **UJERBOONISSA ZUMBERUN** [11 W R, 426]

8 ———— *Presumption of*

9 ———— *Presumption as to legitimacy of son—Custom of primogeniture*—Observations on the law laid down by the Privy Council regarding the presumption of legitimacy which arises under the Mahomedan law in the absence of proof of marriage when a son has been uniformly treated by his father and all the members of the family as legitimate. **MUHAMMAD ISMAIL KHAN v BIDAYATUNISSA** I L R, 3 All, 723

10. ———— *Legitimacy of son—Presumption of marriage*—Where a son has been uniformly treated by his father and all the members of the family as legitimate, a presumption arises under the Mahomedan law that the son's mother was his father's wife. **HAJAJOORUNISSA v ROWSHAN JEHAN**

[L L R, 3 Cal, 184 26 W R, 38

L R, 3 I A, 291]

MAHOMEDAN LAW—CONTRACT.

1. Consideration—*Relationship*.—By Mahomedan law an agreement to pay an annuity, though signed and registered, has not the effect of a deed in English law, but requires a consideration to support it. The relationship existing between consins is not a sufficient consideration to support such an agreement. *JAFAR ALI NIZAM ALI v. AHMAD ALI ILYAS HANDBAKASH* [5 Bom., A. C., 37]

2. Mortgage—*Redemption of separate mortgage from debt*.—The rule that if the owner of different estates mortgages them to one person separately for distinct debts, or successively to secure the same debt, the mortgagee may insist that one security shall not be redeemed alone, applies to a Mahomedan mortgage. *VIRAL MAHABY v. DAD TALAB ALI MAHABY HUSEN* [6 Bom., A. C., 80]

MAHOMEDAN LAW—CUSTODY OF WIFE.

See HABEAS CORPUS. 13 B. L. R., 160

Rights of mother and husband. —By Mahomedan law the mother is entitled to the custody of a female child, although married, until she has attained puberty. Where a husband applied that his wife, stated in the return to a writ of *habeas corpus* to be "an infant under the age of sixteen years, to wit of the age of eleven years or thereabouts," might be delivered over into his custody, the Court, on the ground that she had not attained the age of puberty, and that her dower had not been paid, refused to order her to be taken from the custody of the mother, although the mother had taken her away secretly, in the absence of her father and husband from Bandra, where they were all living together, to Calcutta. *In the matter of KHATISA BIRI* 5 B. L. R., 557

MAHOMEDAN LAW—CUSTOM.

See CONTRACTS. 1. L. R., 20 Bom., 55
See JURISDICTION OF CIVIL COURT—RELIGION. 1. L. R., 15 Mad., 355
See LIMITATION ACT, 1877, ART. 120. 1. L. R., 20 Cal., 157
1. L. R., 20 I. A., 155
See MAHOMEDAN LAW—ENDOWMENT. 1. L. R., 13 Bom., 555
1. L. R., 22 Cal., 324
1. L. R., 22 I. A., 4
1. L. R., 13 AP., 211

See MAHOMEDAN LAW—KAZI. 1. L. R., 18 Bom., 103
See RETROGRADATION OF, OR OMISSION TO SUBSCRIBE, PORTION OF CIVIL. 1. L. R., 21 Cal., 157
1. R., 20 I. A., 155

MAHOMEDAN LAW—ACKNOWLEDGMENT—

MEANT—*concluded*. Given her evidence, that a valid Mahomedan marriage must always be made in the presence of witnesses, who might have been summoned as witnesses, together with the officiating mollah or kazi; and that the evidence of one such witness, who had been called, actually threw doubt upon itself. *BUTOOLAN v. KOOLSOOM. BUTOOLAN v. LLOYD* 25 W. R., 444

24. *Illegal acknowledgment*.—The son of a Mahomedan by a slave girl, if acknowledged by his father, is entitled to the same share as the son of a lawful wife. The acknowledgment of a son by a Mahomedan need not be a formal acknowledgment; if it can be made out from his acts and conduct, it will be sufficient. *WALIDIA v. MIRAN SANJAY* [2 Bom., 285]

25. *Legitimacy of child*.—Notwithstanding Mahomedan law, a Court of Justice cannot pronounce a child to be the legitimate offspring of a particular individual when such a conclusion would be contrary to the course of nature and impossible. *ASHRAF ALI v. AHMAD ALI* 16 W. R., 260

26. *Acknowledgment by brother—Brotherhood—Asad—Illegal in a case*.—A man cannot acknowledge a brother so as to establish the same. *SHARBAZI BEGUM v. HIKMAT BAHADUR* 4 B. L. R., A. C., 103; 12 W. R., 512

S. C. affirmed on review. *HIKMAT BAHADUR v. SHARBAZI BEGUM* 14 W. R., 125

affirming decision of High Court in preceding case.

MAHOMEDAN LAW—BILL OF EXCHANGE.

Notice of dishonour.—Notice of dishonour of a bill of exchange is not necessary by Mahomedan law. *GAPINATH v. AHMAD HOSSEIN* [7 B. L. R., 434 note]

MAHOMEDAN LAW—ACKNOWLEDG
MENT—continued.

Mahomed Yusuf, I. L. R., 10 Calc., 663, referred to
 МАМАММАД АЛЛАНДАН БЖАН r. МАНАММАД ИС-
 МАИЛ БЖАН I. L. R., 8 All., 234

17. ————— *Inheritance—Legitimacy—Acknowledgment of sonship.—*PERDUE, C J, and STRAIGHT, J.—The rules of the

no specific person is shown to be the father, then

acknowledger or of any one claiming through him
Per MAHMOOD, J.—Although, according to the
 Mahomedan law, *ikr* or acknowledgment in general
 stands upon much the same footing as an admission
 as defined in the Evidence Act, acknowledgments of

Hossein Khan v. Hyder Hossein Khan, 11 House's
I. A. 93, Muhammad Asmat Ali Khan v. Laili
Begum, L. R. 91 A. 8, 1 L. R. 8, Calcutta, 122; and
Sadakat Hossein v. Mahomed Yusuf, L. R. 11
I. A. 91-1 L. R. 10 Calcutta, 663, referred to
Muhammad Allardad Khan v. Muhammad Is-
mail Khan. 1 L. R. 10 All. 269

18. ————— *Legitimacy* —
Held that a Mahomedan could not, by acknowledging
him as his son, render legitimate a child whose mother

MAHOMEDAN LAW-ACKNOWLEDG-
MENT-continued.

at the time of his birth he could not have married
by reason of her being the wife of another man.
Muhammad Allahdad Khan v Muhammad Ismail
Khan, I. L. R. 10 All. 259, followed I LAQUAT
ALI v KARIM-UN-NISSA I. L. R., 15 All. 398

19. _____ Acknowledgment,

mod *Ismail Khan, I L. R., 10 All. 289.* followed.
 AIZUNNISA KHATOON v KARIMUNNISA KHATOON
 [I. L. R., 23 Cal. 130]

20. ————— Acknowledgment,
Effect of—Legitimacy of children—Fornication—
Sunnī Mahomedans—Under the Mahomedan law,

[L. L. R., 27 Calc., 801]

21. *Mode of acknow*
ledgment.—In order to an acknowledgment of pater-
nity legitimating children under the Mahomedan law,
the declaration ought to be clear and distinct in
respect to each child, and the children, or those of
them who have reached years of discretion, ought to
come forward and acknowledge their father. KIDAN-
NATH CHUGGERBUTTY v. DONKELE 20 W. R. 352

22. — — — Form of acknow-

140 77. 10, 403

23. ————— Legitimacy of children—Presumption as to marriage.—Where a Mahomedan lady sued for a declaration of the validity of her marriage with the man with whom she had lived and of the legitimacy of their children, and relied upon the position which her reputed husband gave her during his lifetime in his family and on his treatment of their children, —Held following Privy Council in *Abdurrozzodoneh v. Ahmed Khan*. — *1884* 10 B. 1008.

—concluded.

o promote prostitution, which the Mahomedan law reprobates and prohibits absolutely, would be contrary to the policy of that law. Where property left by a female Kanhani, deceased, was claimed by her legitimate kindred, it was held that an "adoption," so called, in conformity with those practices, had not operated to separate her from the family in which she was born. The mode in which her property had been acquired was not the subject of the present question, which was only concerned with the right of personal succession to it; and that property was held to be distributable according to the rules of Mahomedan law governing inheritance. *GHASIT v. UMMAO LAK, GHASIT v. LAGAV* [I. L. R., 21 Cal., 149; I. L. R., 20 I. A., 193]

MAHOMEDAN LAW—CUTCHI ME-
MONS.

See Cases under HINDU LAW—INHERITANCE—SPECIAL LAWS—CUTCHI ME-
MONS.

1. —Hindus—*Hindu Wills Act, s. 2*—*Probate of will*.—Cutchi Memons are not Hindus within the meaning of s. 2 of the Hindu Wills Act (XXI of 1870), and therefore probate, to take effect throughout India, cannot be granted in the case of a will of a Cutchi Memon testator. Cutchi Memons are Mahomedans to whom Mahomedan law is to be applied, except when an ancient and inviolable special custom to the contrary is established. In re ISMAIL [I. L. R., 6 Bom., 452]

2. —Law of inheritance appli-
cable to.—In the absence of proof of any special custom of inheritance, the Hindu law of inheritance applies to Cutchi Memons. *ASHAFAT v. TYRAB HARI KANTHUTIA* [I. L. R., 9 Bom., 115; *ABDOO QADIR HARI MAHOMED v. TURNER* [I. L. R., 9 Bom., 158]

MAHOMEDAN LAW—DEBTS.

See DEBTOR AND CREDITOR.

[I. L. R., 8 ALL, 178]

See Cases under REPRESENTATIVE OF
DECEASED PERSON.

See Cases under SALE IN EXECUTION OF
JUDGMENT—DEBTS AGAINST REPRESENTA-
TIVES.

1. —Decree against heir of debtor
—*Effect of decree against one heir*.—Under Maho-
medan law, a decree against one heir of a deceased
debtor cannot bind the other heirs. *STANAB DAS
v. ROY LUCHMIVUT SINGH* [I. C. L. R., 268]

2. —Consent decree against one
heir. *Effect of—Heir of deceased debtor—Intes-
tate—Mahomedan—Representation of deceased
debtor*.—*Per GARTH, C.J.*—A decree by consent
against one heir of a deceased debtor cannot, under the

MAHOMEDAN LAW.—Under the Mahomedan law, the estate of an intestate descends entirely, together with all the debts due from and owing to the deceased. The creditor of an intestate Mahomedan must enforce his claim against the estate in a suit properly framed for the purpose. Such a suit is properly framed if all the persons in possession of that particular portion of the estate which it is intended to charge are made parties to it. The right of a Mahomedan heir claim-
ing the property of his deceased ancestor, who died indebted, is a right of representation only, and except as representative he has no right to the property whatsoever. *ASSAVALATHANAYASA BIRAR v. ROY LUCHMIVUT SINGH* [I. L. R., 4 Cal., 142; 2 C. L. R., 223]

3. —Creditors of deceased person
—*Alienation by her—Purchaser from heir of Mahomedan—Lis pendens*.—The creditor of a de-
ceased Mahomedan cannot follow his estate into the hands of a *bond fide* purchaser for value, to whom it has been alienated by the heir-at-law, whether the alienation has been by absolute sale or by mortgage. But where the alienation is made during the pendency of a suit in which the creditor obtains a decree for the payment of his debt out of the assets of the estate which have come into the hands of the heir-at-law, the alienee will be held to take with notice, and be affected by the doctrine of *lis pendens*. *BAZAYAR HOSSAIN v. DOOL CHUND. MAHOMED WAJID v. LAXYBAN* [I. L. R., 4 Cal., 402; I. R., 5 I. A., 211]

4. —*Rights of mortgagee*.—The debts of a de-
ceased Mahomedan are not a charge upon the estate which gives the creditor a priority over all persons who after his death purchase or take a mortgage of his estate. See *Bazayel Hossain v. Dool Chund*, *L. R., 5 I. A., 211*, followed. *LAND MORTGAGE BANK v. ROY LUCHMIVUT SINGH* [8 C. L. R., 447]

5. —The creditor of a
deceased Mahomedan cannot follow his estate into the hands of a *bond fide* purchaser from his heir, *Bazayel Hossain v. Dool Chund, L. R., 5 I. A., 211*, followed. *LAND MORTGAGE BANK v. ROY LUCHMIVUT SINGH* [8 C. L. R., 447]

6. —*Sale in execution of money-decree against the representatives of de-
ceased Mahomedan—Rights of purchaser at execu-
tion—Sale against mortgagee—Notice*.—In execution of a money-decree against the heirs of a deceased Mahomedan for a debt incurred by him, a purchased certain property which had been allotted to the widow of the deceased in lieu of dower and of her share of the inheritance. Previously to the purchase, how-
ever, the widow had mortgaged the same property to B, who, at the time of the mortgage, knew of the debt for which the decree was obtained. In a suit by B against A on the mortgage, it was not shown that there were not assets in the hands of the heir-at-law to satisfy the debt due to A's vendor. *Held* that B was entitled to recover. *Bazayel Hossain v. Dool Chund*

MAHOMEDAN LAW—CUSTOM

MAHOMEDAN LAW—CUSTOM

—continued

1 ——— Kazi, Appointment of—Hereditary office Grant of—In the absence of an established local custom to that effect the office of Kazi is not hereditary *Quare*—Whether such a custom would be valid JAMAL WALAD AHMED v. I L R., 1 Bom., 633

to eject on
omedan recd
there to the
to be held by the latter as long as he

Benefit of his lease DEBOLLA v. DEBOLLA, 1 BHAI I L R., 8 Bom., 408

3 ——— Exclusion from inheritance of females by sons—*Labi*—*Ravuthans* of Palgat—Mahomedan religion—Hindu law of inheritance—Evidence necessary to support valid custom—A claim by the widow of S Ravuthan a *Labi* of Palgat and her daughters for their shares of his estate under Mahomedan law was opposed by other members of the family who pleaded that according to a special custom obtaining among the Ravuthans of that part of the country adopted from Hindu law females are excluded from inheritance if sons or sons' sons exist In two instances it was proved that women of this class had obtained shares under Mahomedan law by suits without this plea having been put forward The District Munsif found on appeal Judge id by the Munsif accepted as having the force of law MIRABINI v. VELLAYANNA I L R., 8 Mad., 464

4 ——— Division of estate in cases of intestacy—*Impartible estate*—Beng Reg VI of 1793—Beng Reg X of 1800—The family usage that a zamindari has never been separated but has devolved entire on every successor, though proved to have existed as the custom for many generations, did not exempt the zamindari from the operation of

5 ——— Public worship in mosque—*Injunctio restraining defendants from interrupting religious ceremonies in a masjid*—*Right of imam and of mutawals to be protected in their offices*—*Differences of opinion between the imam and certain of the worshippers as to observances at prayer*—Among Sunni Mahomedans neither on the ground of any general and express rule of Mahomedan law nor on the ground of the growth of customs separating different schools in so marked a manner that the followers of one school could not properly worship with those of another did the introduction by the imam of (a) the loud toned Amen and of (b) the Rafadan show such a change of tenets Nor was it in itself such an important departure from the custom of Sunnis as that it would disqualify the imam for officiating in a masjid where those ceremonies had not previously been used Nor did the introduction of (a) and of (b) justify a section of the worshippers in setting up another leader of prayer at the same time that prayer was being conducted by the duly authorized imam On the lower Appellate Court's findings of fact there was nothing in the constitution of the mosque which prohibited the adoption of (a) and (b) and those findings were conclusive For the purpose, however of considering the case from other points of view their Lordships examined the whole of the evidence, and they agreed with the Subordinate Judge that there was no evidence showing that the mosque was not intended for the worship of all Sunnis or for all Mahomedans Nor was there any rule of law that when public worship had been performed in a certain way for twenty years there could not be any variation, however slight from that way The question in each case of dispute must be as to the magnitude and importance of the alleged departure There had not been produced a *y* text to show that a follower of Abu Hanifa would do wrong in following a practice recommended by others of the four imams Nor was there any usage having the force of law among Sunni communities forbidding the introduction of (a) and (b) into ceremonial prayer as shown by the evidence of learned Mahomedans and by proof of their actual practice The judgments in *Empress v. Ramzin* 1 L R 7 All 461, and *Ataulla v. Azim*, 1 L R 12 All 494, referred to The Court ought not to declare that the imam or mutawals of the masjid had authority to eject the dissentients if and when they interfered The plaintiffs must rely on the prohibitory order or injunction which could be enforced according to law if the occasion arose FAZI KARIM v. MAULA BAKSH I L R., 18 Cal. 448 [L R, 18 I A, 50]

6 ——— Immoral customs—*Succession to property among Kachans*—*Practices not enforceable as law* to recognize the same

Among Mahomedan

enforceable as law to recognize the same

MAHOMEDAN LAW-DEBTS—continued.

whereof the said took place. *Haidanmura v. Sheo-*
bran, 6 B. L. R., 64; *Asymathemessa Bitter*
v. Roy, 12 *Asymathemessa Bitter*, 142;
Alchazar Ali v. Bhatt Singh, 1 T. R., 4 Cal., 142;
Blackman v. Blackman, 1 T. R., 6 411, 583; *Hem-*
ing v. Zaka, 1 T. R., 1 411, 67; and *Halligan*
v. Ahmed Ali, 1 T. R., 5 Cal., 370, referred to by
Manickop, T. Jarni Bheas v. Amin Manickop
Khas. I. T. R., 7 411, 822

12. -
Inheritance - Devolution not suspended till payment of decedent ancestor's debts. A creditor of A, deceased, obtained a hypothecation bond, a hypothecation of A's real estate, in execution of the decree, the whole estate was sold by auction on the 2^d of March 1878, and purchased by the decedent himself. A, another of A's heirs, was not a party to these proceedings. On A's death, her son and heir, F. H., conveyed to M A the title and interests inherited by him from his father, - namely, her share in A's estate. The purchaser of the share thereupon brought a suit against M, to recover the share of A, the share of his estate claimed in the suit devolved upon F; that she being a party to the decree of the 20th December 1876, her share in the property could not be affected by that decree, nor by the execution-sale of the estate last March 1878; that upon her death that share devolved upon the plaintiff; that the plaintiff was therefore entitled to recover possession of the share which he had purchased, but that he could not do so without payment to the defendant of his proportionate share of the debts of A, which were paid off from the proceeds of the auction sale of the 21st March 1878. *J. L. R., 7 All., 829, following. M'NAMARA v. HAN SAHAI, 12 L. R., 7 All., 829, following. M'NAMARA v. HAN SAHAI, 12 L. R., 7 All., 829, following.*

18. Liability of one
of several heirs to pay ancestor's debt, when but
one heir is on an action debt would be barred by limit-
ation of principle of—Act 11 of 1871, s. 21.—A.
Hindu and a creditor of B, a deceased Mahomedan,
and C, D, E, and F, his heirs, to recover a sum of
money alleged to be due on a r ka, alleging that
they were in p session of B's estate, and paying
it was not disputed that the debt would have been
barred by limitation but for a part payment made by
B, and endorsed by him on the back of the r ka. B,
as found not to have been made with their consent,
the first Court, considering that collision existed
between A and C, and having regard to the fact
that C did not dispute his liability, gave A a decree
for the full amount of the debt against C without
putting whether the r ka was genuine or not, and
decreeing that the shares of D, E, and F in B's estate
were not liable for any portion of the debt. A

MAHOMEDAN LAW—DEBTS—continued

Chund, L. R., 5 I A, 211, followed NARSINGH DASS v NAJMOODDIN HOSSEIN

[L. R., 8 Cal., 20; 10 C. L. R., 225]

7 ——— Administration,
Sut for—suit by creditor of deceased Mahomedan
against his heir—Sale in execution of decree—

daughter In execution of these decrees portions of
the property were sold. Thereupon two married sisters
of the deceased who lived with their husbands apart
from the widow and daughter sued as heirs of the
deceased to recover their shares of the property sold.

obtains a decree against the assets of the deceased,
such a suit is to be looked upon as an administration
suit, and those heirs of the deceased who have not
been made parties cannot, in the absence of fraud

*Hidayatoolah v Rai Jan Khanum, 3 Moore's I
A, 295 and Bazayet Hossein v Dooli Chund, L
R 5 I A, 211 referred to MUTTEJAN v AHMED
ALLY L. R., 8 Cal., 370-10 C. L. R., 348*

8 ——— Suit by creditor
of deceased Mahomedan against his heir—Adminis-

JAN v BAIJ NATH SINGH alias BAIJU SINGH
[L. R., 21 Cal., 311]

9 ——— Suit by creditors

MAHOMEDAN LAW—DEBTS—continued

satisfactorily of which the sale was effected. *HAMIR
SINGH v ZAKIA I. L. R., 1 All., 57*

HENDRY v MOTTALL DUDR
[L. R., 2 Cal., 395]

10 ——— Succession—Suit
against one of the heirs of a deceased person for
debt.—The heirs to a deceased Mahomedan divided his
estate among themselves according to their shares
under the Mahomedan law of inheritance, a small
debt being due from the estate at the time of his death.
Two of the heirs were subsequently sued for the
whole of such debt. Held that inasmuch as such

from and as a decree against such heirs would

11 ——— Inheritance—
—Devolution not suspended till payment of de-
ceased ancestor's debts.—Decree in respect of de-
ceased ancestor's debts passed against heirs in pos-
session of estate.—Decree not binding on other heirs
not parties thereto and not in possession so as to
convey their shares to auction purchaser in execu-
tion.—Recovery of possession by other heirs contin-
gent on payment of proportionate shares of debt
for which decree was passed.—Upon the death of
a Mahomedan intestate, who leaves unpaid debts,

bind the other heirs who by reason of absence or
other cause, are out of possession so as to convey to
the auction purchaser, in execution of such a decree,
the rights and interests of such heirs as were not

up for sale and purchased certain property which
formed part of the said estate. One of the heirs
who was out of possession, and who was not a party
to these proceedings brought a suit against the

property sold without such recovery on the ground
being rendered contingent upon payment by him of
his proportionate share of the ancestor's debt for

—continued.

12. [I. L. R., 3 Mad., 347.]
Obakar Ibrahim v. Usman
 granted under compulsion. A divorce is valid, though held also that a khoola divorce was a common-law divorce, but proceeding to suggest a common-law divorce, the action of the Court in not dismissing the suit, but proceeding to suggest a common-law divorce, was a common-law divorce, was a common-law divorce.

13. [I. L. R., 300.]
Aswad Ali v. Aswad Ali
 Under the Mahomedan law, a husband may give his wife the power to divorce herself from him according to the form prescribed by that law for divorce by the husband. [I. L. R., 300.]
 The husband. [I. L. R., 300.]
 Under the Mahomedan law, a husband may give his wife the power to divorce herself from him according to the form prescribed by that law for divorce by the husband. [I. L. R., 300.]
 The husband. [I. L. R., 300.]

14. [I. L. R., 8 Cal., 327; 10 C. L. R., 281.]
Latif v. Latif
 Under the Mahomedan law, a husband may give his wife the power to divorce herself from him according to the form prescribed by that law for divorce by the husband. [I. L. R., 8 Cal., 327; 10 C. L. R., 281.]
 The husband. [I. L. R., 8 Cal., 327; 10 C. L. R., 281.]

15. [I. L. R., 4 Cal., 588.]
Hossain v. Javed Binte
 It is not a bar to a divorce by a woman who is in fact his wife, though she is not his wife. [I. L. R., 4 Cal., 588.]
 The husband. [I. L. R., 4 Cal., 588.]

16. [I. L. R., 13 W. R., 480.]
Abdullah v. Abdullah
 The divorce of one acting upon compulsion from threats is effective. [I. L. R., 13 W. R., 480.]
 The husband. [I. L. R., 13 W. R., 480.]

17. [I. L. R., 2 All., 71.]
Zahir v. Zahir
 Whether the form of divorce called *zihar* may be exercised in the matter of marriage. [I. L. R., 2 All., 71.]
 The husband. [I. L. R., 2 All., 71.]

18. [I. L. R., 300.]
Aswad Ali v. Aswad Ali
 Under the Mahomedan law, a husband may give his wife the power to divorce herself from him according to the form prescribed by that law for divorce by the husband. [I. L. R., 300.]
 The husband. [I. L. R., 300.]

19. [I. L. R., 300.]
Aswad Ali v. Aswad Ali
 Under the Mahomedan law, a husband may give his wife the power to divorce herself from him according to the form prescribed by that law for divorce by the husband. [I. L. R., 300.]
 The husband. [I. L. R., 300.]

20. [I. L. R., 300.]
Aswad Ali v. Aswad Ali
 Under the Mahomedan law, a husband may give his wife the power to divorce herself from him according to the form prescribed by that law for divorce by the husband. [I. L. R., 300.]
 The husband. [I. L. R., 300.]

21. [I. L. R., 300.]
Aswad Ali v. Aswad Ali
 Under the Mahomedan law, a husband may give his wife the power to divorce herself from him according to the form prescribed by that law for divorce by the husband. [I. L. R., 300.]
 The husband. [I. L. R., 300.]

22. [I. L. R., 300.]
Aswad Ali v. Aswad Ali
 Under the Mahomedan law, a husband may give his wife the power to divorce herself from him according to the form prescribed by that law for divorce by the husband. [I. L. R., 300.]
 The husband. [I. L. R., 300.]

23. [I. L. R., 300.]
Aswad Ali v. Aswad Ali
 Under the Mahomedan law, a husband may give his wife the power to divorce herself from him according to the form prescribed by that law for divorce by the husband. [I. L. R., 300.]
 The husband. [I. L. R., 300.]

24. [I. L. R., 300.]
Aswad Ali v. Aswad Ali
 Under the Mahomedan law, a husband may give his wife the power to divorce herself from him according to the form prescribed by that law for divorce by the husband. [I. L. R., 300.]
 The husband. [I. L. R., 300.]

MAHOMEDAN LAW—DEBTS—*concluded*

1865 To this suit the daughters of A were not parties. B held the land till 1887, and then sold

the decree obtained by the mortgagee in 184
DAYALAYA v BHIMAJI DHOND

[1 L R, 20 Bom, 338]

18 ——— Power of alienation of heir
—*Executor—Purchaser from heir*—A, a Mahomedan died being indebted to B in a sum of money. B sued the heirs of A for the amount and obtained a decree. Before B obtained his decree, the heirs of A had mortgaged the estate of A to C. The property was put up to sale in execution of B's decree and B became the purchaser, and now sued to

redeem. The heir of a Mahomedan may, as executor sell a portion of the estate of the deceased if necessary for the payment of debts and such sale will not be set aside if the purchaser acted *bona fide*.
FNAÏET HOSSEIN v RAMJAN ALI

[1 B L R, A C, 172, 10 W R, 218]

See HASAN ALI v MURDI HUSAIN

[1 L R, 2 All, 533]

17 ——— Sale for debts of father—M, a Mahomedan inherited certain property from his father which while he was a minor his mother sold to the defendant, in good faith for the discharge of a debt adjudged to be due to the defendant by M's father. M when he became of

was not competent to maintain the suit, without tendering payment of the debt. Held also that even if Mahomedan law were applied and M's mother was not legally competent to sell his property in the assumed character of his guardian the plaintiff was bound to pay the debt due from M's father to the defendant before he could claim, by avoidance of the sale in question the possession of the property in suit. SAREE RAM v MAHOMED ABDEL RAHMAN

6 N W, 288

18 ——— Liability for assets—*Liability of receipt of assets*—Where it is sought to fix a person under the Mahomedan law with liability for the debt of a person deceased by reason of the

MAHOMEDAN LAW—DIVORCE

—*continued*

the deed securing to the husband the stipulated consideration does not constitute the divorce, but assumes and is founded upon it. The divorce is created by the husband's repudiation of the wife and the consequent separation. The husband having dis-

ever gave her assent with a knowledge of its contents and a *kho anamah* (surrendering the wife's settlement) obtained from her mother by means of cruelty and ill usage practised on her daughter, to confirm the *ibranamah*—Held that instruments so obtained could have no legal effect when used as a defence against the wife's claim to her dowry.
RUZI UL ROHMAN v LUTEEF UDDIN

[1 W R, P C, 57 8 Moore's I A, 379]

1 Ind Jur, O S, 1

2 ——— Evidence of divorce—*Husband's statement*—The Mahomedan law does not provide for the nature of the evidence required to prove a divorce. *Quere*—Whether the husband's statement that he has divorced his wife is sufficient proof of the fact. BURSH ALI v AUFSEEN BEEBE

[2 W R, 206]

3. ——— Necessity of written document—Although writing is not necessary to the validity of a divorce under Mahomedan law, yet where a divorce taken place between persons of rank and property and where valuable rights depend upon the marriage and are affected by the divorce, it may be necessary to have a written document to satisfy the court.
GOWHUR .. R, 214

4. ——— Deed of divorce

ALI

8 W R, 33

5 ——— Marriage—Where a Mahomedan was shown to have been duly married her subsequent divorce should not be presumed only from the fact of her husband having taken another wife to live with him in consequence of which his wife left his house and went to live with a relative nor from the fact of his having stated in his will that he had no wife lawful or *neca*.
NOOR BEEBE v NAIFAS KHAN

[1 Ind Jur, N S, 221]

6 ——— Right to leave husband—*Man taking an *ther wife**—A Mahomedan in the *kubranamah* or deed of divorce on his marriage with S stipulated that he should not take a second wife without the permission of S. Held that S was not

MAHOMEDAN LAW—DIVORCE

1 ——— Validity of divorce—*Release of dower by wife*—*Liability of divorce*—According to the Mahomedan law, the non payment by the

MAHOMEDAN LAW—DOWER

not allowed to be excluded from consideration.

NEVABOORAB AHMED v. HOSSAIN.

[4 W. R., 110]

Proof of claim.—The very best description of claim for dower when no khatmah is produced.

HEERNA v. HEERNA.

[7 W. R., 486]

ANDREW JERMAN CHOWHURY v. CHOWHURY or MURSHIDABAD.

[11 W. R., 66]

Deed in lieu of dower.—Possession—Validity of deed—According to the Mahomedan law, a husband under a deed of byemohar executed in lieu of dower is not necessary to its validity.

BY. NERABOORABAH v. DASTAR AHMED.

[3 W. R., 133]

Payment by husband to wife.—Description of nature of payment—Gift—Where a husband granted a dower of five talas to his wife, and subsequently directed Sica to pay the amount of such dower from his estate, — Held by STUART, (J.), (PENNAN, J., dissenting), that, it being nowhere laid down absolutely and expressly by any authority on the Mahomedan law that, however large the dower fixed may be, the wife is entitled to recover the whole of it from her husband's estate, with no reference to his circumstances at the time of marriage or the value of his estate at his death, the plaintiff was only entitled, under the circumstances, to a reasonable amount of dower. Held by the Full Bench, in appeal from the decision of STUART, (J.), that a Mahomedan widow was entitled to the whole of the dower which her deceased husband had on marriage agreed to give her, whatever it might amount to, and whether or not her husband was comparatively poor when he married, or had not left assets sufficient to pay the dower-debt. STUART v. MASRYA HANI.

[1 L. R., 2 All., 573]

Omission to claim dower in legacy.—According to Mahomedan law, if the widow assents to any person's taking a legacy without putting forward her claim to dower, she cannot afterwards retract her assent. REZZA HOSSEIN v. LATOONKISSA.

[24 W. R., 564]

Nature of dower.—Dower not specified.—According to Mahomedan law, dower is presumed, and may be enforced at any time. TADATTA v. HASANABADYARI.

[6 Mad., 9]

MAHOMEDAN LAW—DOWER

—continued.

Suit for dower.—Dower prompt or deferred—Presumption.—According to Mahomedan law, dower, being considered a part of the marriage, is, unless payment of the whole or part of it is expressly postponed, presumed to be prompt and exigible on demand. FATHMA v. HASANABADYARI, 6 Mad., 9, followed. MASRYA HANI v. ASKAR HANI ASKAR.

[1 L. R., 23 Mad., 371]

Exigible dower.—No amount specified or—Held where no specific amount of dower has been declared exigible, and as there was no clear evidence of what was customary, that the Assistant Judge in appeal committed no error in law in holding that one-third of the whole might be considered exigible during the life of the husband, the remaining two-thirds being claimable on his death. FATHMA HANI v. SABIRABADY.

[2 Bom., 307; 2nd Ed., 291]

Mode of payment if deferred.—Inheritance.—Among Mahomedans deferred dower has been payable in the dissolution of the marriage, whether by divorce or by the death of either of the parties. According to Mahomedan law, where the heirs of a woman claimed dower from her husband, which was mortally or deferred, and not due or payable till her death, their claim was a simple money claim founded solely on the contract made by the husband. The husband is not a trustee for the wife in respect of her dower, nor has the wife a lien on her husband's property. QURE—As to the nature of the wife's claim for dower against the heirs of her husband. FATHMA HANI v. ASKAR.

[12 B. L. R., A. C., 306]

S. C. KUTABATY v. ASKAR.

[11 W. R., 212]

MINNAR v. KUTABATY.

[10 B. L. R., 60 note; 13 W. R., 49]

Prompt dower.—Custom.—Under Mahomedan law, when on marriage it is not specified whether a wife's dower is prompt or deferred, the nature of the dower is not to be determined with reference to custom, but a portion of it must be considered prompt. The amount to be considered prompt must be determined with reference to the position of the wife and the amount of the dower, what is customary being at the same time taken into consideration. LATIFABADYARI v. GHULAM KAMAR.

[1 L. R., 1 All., 506]

Non-payment of prompt dower.—Effect of—Husband and wife—Shah—Sunni—Suit for recovery of wife.—A woman of the Sunni sect of Mahomedans marrying a man of the Sunni sect is entitled to the privileges secured to her married position by the law of her sect, and does not thereby become governed by the Shah law. Held therefore where a husband sued to recover his wife, the one being a Shah and the other a Sunni, that the wife's dower being "exigible" dower, and not having been paid, the suit was not maintainable under Sunni law. MASRYA HUSAIN v. HANIDAN.

[1 L. R., 4 All., 205]

MAHOMEDAN LAW-DIVORCE

—continued

form of marriage IN THE MATTER OF THE PETITION OF LUDDUN SARIBA LUDDUN SARIBA & KAMAR KUDDER

[I L R., 8 Calc, 786 II C. L. R., 237

18 ————— *Khoja if a h o medans*—Custom—Custom as to divorce among Khoja Mahomedans of the Suuni sect considered IN RE HASAM PIRBHAI 8 Bom., Cr., 95

19 ————— *Shah school*—

passed under the provisions of the Code of Criminal

divorce does not exist in respect of marriages by the mutta form they can nevertheless be terminated by the husband giving a *vay* the unexpired portion of the term for which the marriage was contracted and the consent or acceptance on the part of the wife is not necessary for the dissolution of the marriage MAHOMED ABID ALI KUMAR KADER & LUDDUN SARIBA I L R., 14 Calc., 276

20 ————— Effect of divorce—*Irrevocable divorce*—According to Mahomedan law &

21 ————— *Talak biddat*—Husband and wife—Order for maintenance upon husband Effect upon order—President of *Majlis* *trates Act IV of 187* s. 231—*Bar A M h o medans*—An order made under s. 234 of Act IV of

the Magistrate's order can no longer be enforced The *talak biddat* or irregular divorce which is effected by three repudiations at the same time appears from the authorities to be a valid but valid. IN RE ABDUL ALI ISHMAELI

[I L R., 7 Bom., 180

So with an order made under Act XLVIII of 1860 (Police Amendment Act) s. 10 IN RE HASAM PIRBHAI 8 Bom., Cr., 95

MAHOMEDAN LAW-DIVORCE

—concluded

22 ————— Maintenance of wife Order for—*Criminal Procedure Code 1872* s. 536—*Iddat*—An order for the maintenance of a wife passed under Ch. XXI of Act X of 1872

wife's *iddat* Abdur Rokhman & Sukhina I L

divorce of a divorced wife in 1911 & *iddat* related to IN THE MATTER OF THE PETITION OF DIN VA ROMED I L R., 5 All., 226

MAHOMEDAN LAW-DOWER.

See DEBTOR AND CREDITOR [I L R., 8 All., 178

See EVIDENCE ACT s. 32 [I L R., 19 Calc., 889 L R., 19 I A., 157

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION [I L R., 18 All., 400

See RESTITUTION OF CONJUGAL RIGHTS [I L R., 8 All., 149 I L R., 17 Calc., 670

1 ————— Dower, Proof of claim to—*Deed of dower*—*Necessity of—Verbal statement*—A deed of dower is not in all cases admissible as to the truth and validity of a claim for dower *Sembli*—There appears to be no reason why a *mukzernamah* or statement made (not on oath before the Court) by parties is a position to know the facts should not have a certain weight JUZUELA & MUKKA 1 Ind. Jur., N S, 26

S C. MULLESKA & JUNEELA 5 W R., 23

& C on appeal to Privy Council MULLESKA & JUNEELA [I L R. 375 L R. I A., Sup Vol. 135

TAJOO BEEBER & NOORUN BEEBER I W R., 31

2 ————— *Verbal contract for dower*—*Customary dower*—*Evidence of amount of—*A verbal contract of dower for a large sum is inadmissible only if proved by most clear and satisfactory evidence A customary dower must be proved by showing a custom of the women of the wife's family to receive rather than of the men of the husband's family to pay a certain dower the Mahomedan dower being the consideration paid by the bridegroom for the marriage and therefore regulated by the position and conduct of the bride especially as Mahomedan men often contract most unequal marriages though the means and position of the bridegroom must

17. *Limitation*—Where dowry is "prompt" limitation does not begin to run until the dowry is demanded or the marriage is dissolved by death or otherwise. The amount claimed—viz. Rs. 116,000—was not having been deposited in the Court of original jurisdiction, was dismissed. *Quere*—Which in the case of a divorce, a cause of action accrues in respect of deferred portion of the property has become intestate, or the dowry has been demanded. *Mahomedan Law*, 1855 [L. R., I. A., Sup. Vol., 1855] [W. R., 1864, 23: 5 W. R., 23] 1 Ind. Jur., N. 8, 28

18. *Right for dowry*—Where a woman is married in respect of her dowry, she is entitled to demand it. *Mahomedan Law*, 1855 [L. R., I. A., Sup. Vol., 1855] [W. R., 1864, 23: 5 W. R., 23] 1 Ind. Jur., N. 8, 28

19. *Right for dowry*—Where a woman is married in respect of her dowry, she is entitled to demand it. *Mahomedan Law*, 1855 [L. R., I. A., Sup. Vol., 1855] [W. R., 1864, 23: 5 W. R., 23] 1 Ind. Jur., N. 8, 28

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23. *Right for dowry*—Where a woman is married in respect of her dowry, she is entitled to demand it. *Mahomedan Law*, 1855 [L. R., I. A., Sup. Vol., 1855] [W. R., 1864, 23: 5 W. R., 23] 1 Ind. Jur., N. 8, 28

24. *Right for dowry*—Where a woman is married in respect of her dowry, she is entitled to demand it. *Mahomedan Law*, 1855 [L. R., I. A., Sup. Vol., 1855] [W. R., 1864, 23: 5 W. R., 23] 1 Ind. Jur., N. 8, 28

25. *Right for dowry*—Where a woman is married in respect of her dowry, she is entitled to demand it. *Mahomedan Law*, 1855 [L. R., I. A., Sup. Vol., 1855] [W. R., 1864, 23: 5 W. R., 23] 1 Ind. Jur., N. 8, 28

26. *Right for dowry*—Where a woman is married in respect of her dowry, she is entitled to demand it. *Mahomedan Law*, 1855 [L. R., I. A., Sup. Vol., 1855] [W. R., 1864, 23: 5 W. R., 23] 1 Ind. Jur., N. 8, 28

MAHOMEDAN LAW—DOWER

—continued

14 ————— Suit for restitu-
tion of conjugal rights—Custom—Prompt and
satisfactory wife

her dower and only seen in a
notwithstanding also that she and her husband may
be cohabited with consent since their
marriage.

Where there is a
suit with
amount of
this rule
determined that one hira is of Rs 5000
not stipulated to be deferred must be considered
“prompt” inasmuch as the wife had been a prosti-
tute and came of a family of prostitutes it exercised
its discretion soundly. EIDAN v MAZHAR HUSAIN
(I L R, 1 All, 483)

15 ————— Restitution of
conjugal rights—A Mahomedan cannot, according to
Mahomedan law maintain a suit against his wife
for restitution of conjugal rights, even after such
cohabitation with consent as is proved by coha-
bitation for five years where the wife's dower is
“prompt” and has not been paid. *Abdool Shukroor*
v. Haheem oon missa, 6 D W, 94, followed.
WILAYAT HUSAIN v ALLAH RAKHI

(I L R, 2 All, 831)

Marriage—Suit

the wife during the
duration of her conjugal intercourse by way of analogy
to price under the contract of sale. Although prompt
dower is demanded at any time after marriage.

hand without her consent, but she was not
willing to claim co-

MAHOMEDAN LAW—DOWER

—continued.

rule allowing the plea of non payment of dower is to
enable the wife to secure payment. Her right
to rest her husband so long as the dower remains
unpaid is analogous to the lien of a vendor upon the
sold goods while they remain in his possession and so
long as the price of any part of it is unpaid; and her
surrender to her husband resembles the delivery of
the goods to the vendee. Her lien for unpaid dower
is not lost by such
acts.
as to defeat altogether the wife's right of
conjugal rights which is maintainable upon the
ground of non payment of such
dower.
may
be regarded as prompt in accordance with the prin-
ciple recognized by Courts of equity under the
general category of compensation or lien when
the plaintiff on

Ryeesoonmissa v. Haheem oon missa, 6 D W, 94, 95.
Jung Khan v. Uzeez Begum, N W, S D A 1943,
46 p 180. *Jann Bebee v. Begum*, 3 W. R 93.
Gatha Ram Yistree v. Mookhta Kochan Aftah
Doomsonee, 14 B L R 298 and *Eidan v. Mazhar*
Husain, I L R, 1 All, 483 referred to. *Abdool*
Shukroor v. Haheem oon missa, 6 D W, 94,
Wilayat Husain v. Allah Rakhi, I L R, 2 All,
1.

specification as to
partly prompt. It also appeared that she had
attained majority before the marriage and that
she had cohabited with the plaintiff for three
months after marriage, and there was no evidence
of non payment of her dower.

—continued.

Mrid in the same case on appeal under the Letters Patent by *Edgar, C.J.*, and *Harnat*, and has been for a time in undisturbed possession, of property which had been of her husband in his lifetime, and dower is admitted or proved to be due to her, it is upon the heir who claims partition without payment of his proportion of dower to prove that the Mahomedan widow was not let into possession by her husband in lieu of dower, or did not obtain possession in lieu of dower after her husband's death with the consent or by the acquiescence of the heirs. *MAHAMMAD KAMIS-DUHAN KHAN v. ASAMI BEGUM* I. L. R., 17 All., 93

28.

Punjab Code.—The widow of a Mahomedan in possession of her husband's estate under a claim of dower has a lien upon it as against those entitled as heirs, and is entitled to possession as against them, till her claim of dower is satisfied. According to the Punjab Code (held to be in force in Oudh in the years 1859 and 1860), the dower mentioned in a marriage contract (instead of being enforced as an absolute debt claimed by the appellant) was subject to a modification at the discretion of the Court, both in the case of a divorce and on the death of the husband. *MIR KAM DO ALAM NAWAB TAJDAR BONDU v. JEMAN KUDU* [2 W. R., P. C., 55; 10 Moore's I. A., 252

30.

—The heir of a deceased Mahomedan having disposed the widow of dower, who was in possession in lieu of dower, of her dower. *AMIR ALI v. SAYFIMAN* [3 B. L. R., A. C., 175

So does a purchaser from her son, and the purchaser cannot dispossess the widow in possession in lieu of dower. *BUNDAR ALI KHAN v. CHITIZ MIHR* 1 Agrr., 278

31.

Law in Oudh.—Discretionary power of the Courts over the amount of dower.—*The Oudh Laws Act (XVIII of 1876), s. 5.*—In a suit by a wife for her dower the Appellate Court altered the amount decreed by the first Court as a reasonable sum payable in lieu of an excessive one, which the husband had on the date of the marriage nominally entered in a nikahnama as the wife's dower. Both Courts acted under the Oudh Laws Act (XVIII of 1876), s. 5. The Judicial Committee, having examined the grounds on which each of the Courts had exercised its discretionary power, considered the reason given by the first Court to be sound and restored the decree. *SUB-MANJ KADU v. MEMUL BEGUM SURRYA BANU* [I. L. R., 21 Cal., 135

L. R., 20 I. A., 144

Oudh, Law of

relating to reduction in amount of dower.—*Deletion of amount of deferred dower recoverable from representatives of deceased husband married by a non-resident of Oudh, not affected by law of that Province—Usage having force of law.*

—continued.

A Mahomedan, a resident in Patna, since deceased, married the plaintiff, while he was for a time in Lucknow where she lived. Upon her claim, as his widow, for her deferred dower, it was found by her been contracted for at the amount alleged by her. The question of the amount of her dower was held to be determinable without reference to a usage having the force of law in Oudh, rendering dower reducible in certain cases by the Court. The place of celebration of the marriage did not make this applicable. *ZAKIRI BEGUM v. SAKINA BEGUM* [I. L. R., 19 Cal., 689

Effect of Oudh Laws Act (XVIII of 1876), s. 5.—Advantage of the Oudh Laws Act, XVIII of 1876, s. 5, pointed out, as giving the Courts discretion to fix an amount of dower as being "reasonable with reference to the means of the husband and the gains of the wife." Instead of making the decree for the amount of dower contractive for, however extravagant that amount may be. *COLLECTOR OF MORADABAD v. HANARAS SINGH* [I. L. R., 21 All., 17

34.

Widow in possession in lieu of dower—Charge on estate for dower.—Where a Court holds that a defendant is in possession of certain landed property in lieu of dower, and that the plaintiff is not entitled to sue for possession of the property until such claim for dower has been satisfied, it is unnecessary to determine the question of the amount of such dower, plaintiff having pleaded that the dower had been surrendered. A Mahomedan widow is entitled to a lien for whatever dower remains due to her, although there may be a dispute as to what is the amount actually due, having reference to the amount originally filed as dower, or to the amount satisfied by payments. An heir to a share of the estate is not entitled to recover possession from the widow so long as any portion of the dower remains unsatisfied, nor can he be entitled to sue for profits, but his proper course is to bring a suit for an account of what is due as dower, and to pray that in satisfaction of that sum and he may be put into possession of his share of the estate. Payment of the widows, like every other debt, must be made before the estate can be distributed amongst the heirs. *BANUD KHAN v. JAKAR 2 N. W., 319*

See UZOLU BEGUM v. LADLER BEGUM [2 N. W., 325 and *IKHAD HOSSEIN v. HOSSEIN BEGUM* [2 N. W., 327

35.

Where the widow of a Mahomedan obtained actual and lawful possession of the estates of her husband under a claim to hold them as one of the heirs and for her dower, it was held that she was entitled to retain possession until her dower was satisfied, with the liability to account to those entitled to the property subject to the claim for the profits received. [10 B. L. R., 45; 14 Moore's I. A., 377

17 W. R., 113

MAHOMEDAN LAW—DOWER

—continued.

years had elapsed from the date of the deed and the time the widow set up her claim for dower, the claim was not barred by limitation. *AMEER (ON-NISSA) v. MORAD (ON-NISSA)*. 8 Moore's I. A., 211

24. ———— *Genuineness of kabinamah—Right to sue without certificate under Act XXVII of 1860, s. 3—Prompt and deferred*

versed the decision. *Held that the kabinamah was*

CONTRACT. IT BEING IN THE CONTRACT WITHOUT THE payment of the dower is to be prompt or deferred, the rule is to regard the whole as due on demand. *Quare*—Where no time for the payment of deferred dower

25. ———— *Lien for dower—Fixing of an oral gift*
 26. ———— *Lien of widow against heir—Amount of dower unascertained—In*

[I. L. R., 3 All., 266]

MAHOMEDAN LAW—DOWER

—continued

death of the deceased. The widow claimed to have her dower first satisfied. The amount of the dower had not been ascertained. *Held* that the widow had a lien for their dower on the estate, and the plaintiff was not entitled to recover possession so long as any portion of the dower remained unsatisfied. This was so though the amount of the dower was unascertained. *AMIR HOSSEIN v. KHADIJA*

[3 B. L. R., A. C., 28 note; 10 W. R., 369]

TAJIM v. WAHED ALI. 22 W. R., 118

KOUSHA BEGUM v. UMRAO BEGUM. 7 N. W., 60

ATAHUR ALI v. ALTAF FATIMA

[10 W. R., 370 note]

27. ———— *Mahomedan widow—Widow's heir—Determination of amount of dower—A Mahomedan widow lawfully in possession of her husband's estate occupies a position analogous to that of a mortgagee and her possession cannot be disturbed until her dower debt has been satisfied and after her death her heirs are entitled to succeed her in such possession, and if wrongfully*

titled to sue for possession of the property until such claim for dower has been satisfied it is not necessary to determine the question of the amount of such dower, the matter being one which could be settled properly by suit for an account of what was due as dower, — was not applicable to a case where the plaintiff seeking to recover possession did not claim as heirs of the widow's husband but as heirs of the widow herself and where the decree for possession passed in their favour would remain undisturbed even if an amount less than that fixed by the lower Appellate Court were found to be what was due as dower. *AZIZULLAH KHAN v. AHMAD ALI KHAN*

[I. L. R., 7 All., 353]

28. ———— *Consent of heirs to possession of widow—Suit by heir claiming*

property of her deceased husband, having obtained such possession lawfully and without force or fraud, and her dower or any part of it is due and unpaid, she is entitled as against the other co-heirs of her husband to retain possession of such property until her dower-debt is paid. It is immaterial to such widow's right to retain possession that such possession was obtained originally without the consent of the other co-heirs. *Bachan v. Hamid Hussain*, 14 Moore's I. A., 377, *Azizullah*

MAHOMEDAN LAW—DOWER

—continued

36 ————— *Right of widow to possession against heirs*—A widow who is not entitled to more than her legal share in her husband's estate has no right to the exclusive possession of the entire estate unless it be found that she was put in possession of the entire estate either by her husband or by the consent of the other heirs or heirs in lieu of dower. *AMEERUN e RUMIEMUM*

[3 Agra Pt II, 162

Where it is so found she has such right. *KUREEM BUKSH KHAN e DOOLHIN KHODD* 15 W R, 62

37 ————— *Hypothecation*—*Beng Reg I II of 1832*—The widow's claim for dower under the Mahomedan law is only a debt against the husband's estate. It may be recovered from the heirs to the extent of assets come to their hands. It does not give the widow a lien on any specific property of the deceased husband so as to enable her to follow that property as in the case of a mortgage into the hands of a bona fide purchaser for value. *Semle*—Under the Mahomedan law there is not hypothecation without seizure but a creditor whether husband or any other creditor if in possession of the husband's property with the consent of the debtor or his heirs might hold over until the debt is

succession inheritance marriage caste or religious usage but simply one of contract. *WAHIDUDDIN e SHUBRATTUN* 6 B L R, 54 14 W R, 239

38 ————— *Assignment to*

shares by any subsequent decree would not affect the assignment and if at all affected she (assignee) would be entitled to have the same extent of land made up

purchased from the assignee were consequently entitled to decree. *DHUN SINGH e PAM SORAI*

[2 Agra, 39

39 ————— *Right of widow*

40 ————— *Dissipation of widow*—*Wasiat*—The widow of a Mussulman in possession of her husband's estate under a claim of

MAHOMEDAN LAW—DOWER

—continued

dower has a lien upon it and is entitled to possession as against those entitled as heirs till her claim is satisfied. Should the widow in such a case be deprived of possession by a decree in favour of heirs who take with notice of her claim to dower and more particularly where her right to sue has been expressly reserved the heirs take subject to a lien of which the property is not divested by the decree. *Held* by the Appellate Bench that in a case in which a Mahomedan widow had after many years of possession as above been compelled to make over one-sixth of her estate to her mother in law and the issued her mother in law for one-sixth of her dower without interest she was entitled to recover her claim without reduction on account of wasilat. *WOOMATOO LATIMA BAKUM e MEERUDDIN e KHANUM*

[9 W R, 318

41 ————— *Relinquishment by son in favour of mother for her unpaid dower*—The Privy Council reversed so much of the decision of the High Court as ruled that the effect of an arrangement between the plaintiff and her son by which the son relinquished his share in his late father's property was not that the mother took an absolute interest in the property in satisfaction of her claim for unpaid dower but that she should have

42 ————— *Widow out of, or in wrongful possession*—Where she is not in possession or her possession is unlawful her right is to demand the amount of her dower from the heirs such amount being realizable from their shares of the estates like other debts in the usual course of law. *MEERUN e NAJERUN* 2 Agra, 335

43 ————— *Right of widow deprived of estate by heir*—Where a Mahomedan widow was improperly deprived of a portion of such estate under a decree in a suit by an heir of her husband the question as to her right of dower having been before the Court but not disposed of by the Judge in that suit, *Held* that the heir must be treated as having taken the property subject to a right of lien which was not divested by the decree in the former suit. *JANEE KHANUM e ANATOO LATIMA KHANUM* 8 W R, 61

44 ————— *Inheritance*—*Transfer by widow in possession in lieu of dower*—*Right of purchaser*—*Heirs*—*Held* that a purchaser of a deceased husband's estate from a Mahomedan widow in possession thereof pending payment of her dower is not entitled to plead non satisfaction of

MAHOMEDAN LAW—ENDOWMENT.

See CUSTOM . . . 1 Bom., 38

See CASES UNDER MAHOMEDAN LAW—
Mosque.

See RIGHT OF SUIT—CHARITIES AND
TRUSTS I. L. R., 20 Cal., 810

1. Creation of endowment—
Verbal endowment.—According to Mahomedan law,
a valid endowment may be verbally constituted with-
out any formal deed SHIRBO NARAIN SINGH v.
ALLY BUKSH SHAH . . . 2 Hay, 415

2. Charges on profits
for definite period.—The primary objects for which
lands are endowed under the Mahomedan law are to
support a mosque and to defray the expenses of wor-
ship therein. The mere charge upon the profits of an
endowed estate of certain items which must in time
cease, and the lapse of which will leave the whole pro-
fits available for the purposes of the endowment does
not render an endowment invalid under the Maho-
medan law MUZHURUL HUQ v. PCHRAJ DATAREY
MOHAPATRU . . . 13 W. R., 235

3. Words declaratory
of appropriation—Motive.—The chief elements of
wukf are special words declaratory of the appropria-
tion and a proper motive cause; and where the de-
claration is made in a solemnly published document,
the wukf is completed DOTAL CHUND MULLICK v.
KHEBAMET ALI . . . 16 W. R., 116

4. Lands set apart

KUNEEZ FATIMA v. SAHEBA JAN . . . 8 W. R., 313

5. Wukf—Construction
of deed of endowment—Settlement on person

wukf the remaining four annas in favour of my
daughter B and her descendants as also her descen-
dants' descendants' descendants, how long soever, and
when they no longer exist, then in favour of the poor
and needy." Held this settlement did not create a

to reduce himself to a state of absolute poverty.
MAHOMED HANIFULLA KHAN v. LOIFUL HUQ
[I. L. R., 6 Cal., 744; 8 C. L. R., 164]

MAHOMEDAN LAW—ENDOWMENT

—continued.

7. Wukf—Settlement
on man and his descendants—Semble.—To con-
stitute a valid wukf according to Mahomedan law, it
is not sufficient that the word "wukf" be used in
the instrument of endowment. There must be a de-
dication of the property solely to the worship of God
or to religious and charitable purposes. A Maho-
medan cannot therefore, by using the term "wukf,"
effect a settlement of property upon himself and
his descendants, which will keep such property
inalienable by himself and his descendants for ever.

ABDUL GANNE KASAM v. HUSSEN MIYA RAHIMTULA
[10 Bom., 7]

8. Wukf—Possession,
Delivery of—Grant of endowed property.—To con-
stitute a valid "wukf" or grant made for charitable
and religious purposes it must, according to the doc-
trine of the Shias be absolute and unconditional and
possession must be given of the "mowkoof" or thing
granted. Where a Mahomedan lady executed a deed
conveying her property on trust for religious purposes,
reserving to herself for life two-thirds of the income
derivable from the property, and only making an
absolute and unconditional grant of the rest for the
purposes of the trust, Held that, under the Maho-
medan law, the deed must be considered invalid with

9. Wukf—Mu-
tals—Right to sue.—A Mahomedan of the Shia

ders, on the extinction of both, to the heirs of the
settlor. The settlor constituted himself the nazir or

the property of another of the daughters or the

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ultimate trust for charity—Document not established—A Muslim cannot settle his property in trust on his own dependants in perpetuity without making an express provision for his ultimate devotion to a charitable or religious object. A Mohammedan executed a deed, called a wakfnamah, by which he settled his property in which on his two wives and daughters and their descendants in perpetuity. For the management and devolution of this property he laid down the following rules: (1) that if one of the husband (or daughter) or either wife died, the share of that person should go to the wife and the survivors of her husband; that after the death of a wife her share should go to her surviving husband; that if a wife and her husband ceased to exist, their share should go to the other wife and her husband; that on the failure of husband and wife of both wives, the next of kin of the husband should receive the property; and he added that in this way the management should go on from generation to generation; (2) that neither of the said two wives nor any one of the husband or the wife's shares should be alienated by sale, gift, or mortgage; that their shares or any part of the property. A portion of this property, consisting of two manzars, was set apart for such purposes as the building of his own tomb, the paying of prayers, the recitation of the Koran, &c.; and he directed that in case the produce of the two manzars proved insufficient for these purposes, his wives and daughters and their descendants should contribute out of the property settled in wakf on them. He held that, with the exception of the two manzars set apart for religious purposes, the rest of the settlement was not a valid wakf, as it was solely for the benefit of the settlor's family, and continued no express provision for the ultimate devolution of the property to any religious or charitable object. Nizamuddin GAYAK v. AMBA GAYAK. I. L. R., 13 Bom., 264.

Filed on appeal by the Privy Council, affirming the above decision, that the instrument could neither be maintained as establishing a wakf, nor as a settlement: not that it could not be interpreted as a will, not having been validated by consent of heirs, as to two-thirds of the successors; and that, even if it could have been dealt with as a will, the above provision would have been void. A wakfnamah, to be valid, must be a substantial dedication of property to a religious or charitable purpose at some time or other. *Almohamed Alsamul Chowky v. Amarchand Kumbh, L. R., 17 I. A., 28; L. T. J., 17 Cal., 498.* referred to and followed. *AMBA GAYAK v. NIZAMUDDIN*

18. Appropriation of property settled not within the principle of wakf.—Effect of appropriation where the charge was not a substantial one.—Although the making provision for the grantor's family out of property dedicated to religious or charitable purposes may be consistent with the property being constituted wakf, yet in order to

MAHOMEDAN LAW—ENDOWMENT

—continued.

might include provisions for the benefit of the grantor's family without its operation as a wukf

there being no authority for holding a gift to be good as a wukf without there being a substantial dedication of the property to charitable or religious uses at some time or other and the uses prescribed involving only an outlay suitable for such a family to make in charity, the gift was held not to be a substantial or *bona fide* dedication of the property as wukf. The use of this expression, and others, being only to cover arrangements for the benefit of the family and to make their property inalienable, the property was not constituted wukf, nor was it freed from liability to attachment in execution of a decree against one of the grantees. MAHOMED AHASANULLA CHOWDHRY v. AMARCHAND KUNDU

[I. L. R., 17 Cal., 488

I. R., 17 I. A., 28

19. ———— *Wukf Constitution of—Dedication of property with temporary intermediate interests—Uncertain contingency—* To constitute a valid wukf, there must be a dedication in favour of a religious or charitable purpose, although there may be a temporary intermediate

wukf's family. RASAMAYA DHUR CHOWDHURY v. ABUL FATA MAHOMED ISHAH

[I. L. R., 18 Cal., 389

20. ———— *Wukf, Constitution of—Dedication to pious objects—Sajjada-nashin—Mutwalli—Minor, Appointment of, as*

MAHOMEDAN LAW—ENDOWMENT

—continued.

The respective duties of sajjada-nashin and mutwalli
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21. ———— *Settlement in favour of the settlor's family with the reservation of a life interest in part or the whole of the income for the settlor—"Charitable"—"Religious"—* A wukf in favour of the settlor's children and kindred in perpetuity, with a reservation of a part or the whole of the income thereof in favour of the settlor for his own use during his lifetime, is valid. MAHOMED AHASANULLA CHOWDHRY v. AMARCHAND KUNDU I. L. R., 17 Cal., 498 I. R., 17 I. A., 28, referred to. RASAMAYA DHUR CHOWDHURY v. ABUL FATA MAHOMED ISHAH, I. L. R., 18 Cal., 389, dissented from. In the construction of a deed of wukf, the words 'charitable' and 'religious' must be taken in the sense in which they are understood in Mahomedan law. MAHOMED ISRAIL KHAN v. SASHI CHURN GHOSH I. L. R., 19 Cal., 412

22. ———— *Wukf—Conditional and revocable dedication—Conditions of a valid dedication—* A Mahomedan by an instrument

ing majority; (3) in the event of the settlor's death without leaving children, with the income of the

recover her proportionate share of the property, notwithstanding the provisions of the above instrument. *Per* SHERMAN, J.—There had been no complete dedication of the property, and except so far as regards the income required for the three specific objects named by the donor, her property was undisposed of. Conditions of a valid wukf considered. PATRICKETTI v. AVATHALAKUTTI

[I. L. R., 13 Mad., 66

23. ———— *Wukf—Construction of document—* Where a Mahomedan of the Shia

—continued.

Handwritten: [I. L. R., 16 VII., 321]

[T. L. R., 15 Apr., 321]

27. — *W. k. f. - Settler.*

57. Wink-J-Settle-ment in favour of the settlor's family not substantially for religious and charitable purposes—appropriation not within the principles of *Wink-J-Settle-*ment. Property settled on the settlor's family for charitable purposes when the settlor is a settlor.

and charitable purposes—Charge. Effect upon where not valid.—A settlor by instrument purported to create a trust in favour of his family and in the event of a failure of his descendants, in favour of the poor of Dacca. The lower appellate Court held that the deed created a valid trust, and that, subject to such charge, the properties were alienable. Held by the majority of the Full Bench (Brett, J. dissenting) that the

and Ghouse, J.J.; Ameer Ali, J., dissenting), authority of Mahomed Ahsanulla Chowdhury v. Amrullah Khan, I. L. R., 17 Cal., 498; I. R., 17 I. A., 28, that the instrument did not create a valid will, there being no substantial dedication to religious and charitable purposes. Held by the majority of the Full Bench (Prinsler, Ghouse, and Ameer Ali, J.J.; Petherick, C.J., and Theobald, J., dissenting) that the clause of 17th paragraph

should be allowed. *Held* by PINES, TRENTAN, and GROSS, *J.J.*, that the course of the decision should not be disturbed by reference to texts which may favor the idea that a settlement on the settlor and his descendants in perpetuity is a pious act. Upon the findings of the lower Courts no second appeal lay, and it was not therefore necessary to express any opinion as to the validity of the instrument. *WINTER A.D. 1.*—The disposition in question, viewed

According to the Abolition law, which supplies ample arguments against its fraud, created a valid endowment. There is a consensus of opinion among Abolitionists, teachers of every school and sect that evils on children, kindred, or neighboring in perpetuity are nullified. To hold that a work, the denotation of which is best known wholly or in part on the works of unbelief and disobedience, is invalid, would have the effect of abrogating an important branch of the Abolition law. A work is a permanent benefaction for

the good of God's creatures. The wark may consist of the usufruct, but not the property, upon whomsoever it chooses, and in any manner whatever, only it must be for ever. If the bestors the usufruct in the first instance upon those whose maintenance is obligatory upon him, or if he gives it to his descendants so long as they exist, to prevent their falling into indigence, it is pious not, even more pious than giving to the general body of the poor. When a wark is created constituting the family or descendants of the wark the recipients of the charity so long as they exist, the poor expressly or impliedly brought in to impart permanency to the endowment. The subsequent conduct.

[illegible]

the estate in perpetuity intact under the heading of the property to charitable uses, but the object of the bequest was evidently merely the maintenance of the family estates and of the dignity of the name. *Macomber v. Macomber*, 17 Cal. 498; *L. R.*, 17 *L. A.* 291; *Howell v. Howell*, 17 Cal. 498; *L. R.*, 17 *L. A.* 291; *2 Cal.*, 181; *L. R.*, 3 *L. A.* 291, and *Widdowson (Infant v. Infant)*, 1 *L. R.*, 13 *Bom.*, 261, *reversed*. *Shirazi v. Shirazi*, 1 *L. R.*, 13 *Cal.*, 291.

24. Wright v. Wright.—Woman also suing provision for descendants of the grantor.—The fact that the grantor of a will has in the deed constituting the same made some provision for the maintenance of his kindred and descendants will not render the will invalid. *Macomber v. Macomber*, 13 N. H., 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852,

25. *Stipulation—Sua sed—According to the law applicable to the Shias sect of Mahomedans, a wakf-bil-wasayat, or testamentary wakf, is not valid unless actual delivery of possession of the appropriated property is made by the wakif (or appointor) himself to the mutwalli (or superintendent appointed by the wakif). According to the same law, the death of the wakif before actual delivery of possession of the wakf renders the trust void *ab initio*. Consequently, where the mutwalli dies, as mentioned above, before actual delivery of possession of the appropriated property, the consent of his heirs to the testamentary wakf cannot validate such wakf. Distinction between wakf-bil-wasayat and wakf-bil-wakf explained. Agha Ali Khan v. Mirat Hasan Khan I L. R., 14 All., 423*

26. *Wakf-Nazari*—According to the law of Sunni Mohammedans, it is essential to the validity of a wakf that the wakf should actually vest himself of possession of the wakf property. Therefore where a Sunni Mohammedan executed and registered a deed purported to be a deed of wakf, but never effected upon it and retained possession until his death, it was held that no valid wakf of the property was subsequently passed to his two sons by inheritance, and the said deed was constituted. *Murad Ali v. The Proprietors of the Wakf of the Property of the Late Mirza Asadullah Khan*.

MAHOMEDAN LAW-ENDOWMENT

—continued.

operate to establish what, as it is a matter of

Muzhurool Ilug v Puhry Ditaray Mohapattar,

good as a wakf without there be a substantial dedication of the property to charitable or religious uses at some time or other and the uses prescribed involving only an outlay suitable for such a family to make in charity, the gift was held not to be a substantial or *bona fide* dedication of the property

19. ———— *Wakf Consti-*

although there may be a temporary intermediate application of the whole or part of the benefits thereof to the family of the appropriator or wakif, and the dedication must not depend upon an uncertain contingency, such as the possible extinction of the wakif's family *RASAMAYA DHUR CHOWDHURY v ABUL FATA MAHOMED ISHAK*

(I. L. R., 18 Cal., 399)

20. ———— *Wakf, Consti-*

Kuberoodeen, 2 Moore's I. A., 390, referred to.

MAHOMEDAN LAW-ENDOWMENT

—continued.

The respective duties of *sajjadanashin* and *mutwalli* discussed. The mode of appointment of *sajjadanashin* referred to *Semle*—A minor cannot be appointed the *sajjadanashin* of a *durga* or shrine *PIRAN v ABDOOL KARIM I. L. R., 18 Cal., 203*

21. ———— *Settlement in favour of the settlor's family with the reservation of a life interest in part or the whole of the income for the settlor*—"Charitable"—"Religious"—A wakf in favour of the settlor's children and kindred in perpetuity, with a reservation of a part or the whole of the income thereof in favour of the settlor for his own use during his lifetime, is valid *Mahomed Ahsanulla Chowdhry v Amarchand Kunda I. L. R., 17 Cal., 498 I. A., 17 I. A., 28, referred to Rasamoya Dhur Chowdhury*

SASMITI CHURN GHOSH I. L. R., 19 Cal., 413

22. ———— *Wakf—Conditional and revocable dedication—Conditions of a valid dedication*—A Mahomedan by an instrument

dealing with the property as a special fund for the

PATRUKUTTI v AVATHALAKUTTI

(I. L. R., 18 Mad., 66)

23. ———— *Wakf—Construction of document*—Where a Mahomedan of the Shia sect executed a document purporting to come into operation after his death, which document provided in a most complete manner of the devolution of his

37. —————
Said agent at
reference to a letter from the Board of direc-
tors not previously considered under the rules of the
Board and reported as not approved by the directors.
The government of property - Liability of
property and other assets arising under the act.

—Act II of 1867, art. 100
—Act I of 1867 and Bombay Act II of
1861 - Act of merger, liability of parties.—A
certain Mal compound was possessed of considerable pro-
perty. The administration of the house and its
property was carried on under rules which had been
drawn up and approved in the year 1831 at a special
general meeting of the joint council for the pur-
pose in the course of a suit which had been filed in
the Supreme Court against the then managers of the
house. That suit was referred to the master to
make certain inquiries, and in his report those rules
were set out in full. His report was confirmed by
the Court. The rules provided that the mosque and
its property should be managed by the kazi of
Bombay and ten mubashirs, and that a nazir should
be appointed by him, and be subject to their control.
The rules also prescribed the various duties of the
kazi, mubashirs, and nazir, and declared that the
power of filling up vacancies should be exercised by
the kazi and mubashirs collectively or by the kazi
and an absolute majority of the mubashirs. In 1854,
and for many years subsequently, there was, as the
land always bore, a "Kazi of Bombay" appointed
under a grant from Government. He held the ap-
pointment for life, and the office was not hereditary.
In 1866 the then kazi of Bombay died, but in con-
sequence of the provisions of Act II of 1864 and
Bombay Act IV of 1861 the Government made no
new appointment, and the office lapsed. One M.
however, assumed the office and was generally ac-
cepted by the community as Kazi of Bombay. He died
in 1878, and upon his death rival claimants sought
the office of Kazi of Bombay. The mubashirs were
then advised that they could not select one of the
rival kazis to fill the office of Kazi of Bombay under
the rules, and they therefore continued to manage
the mosque without a kazi in violation of the rules
of 1834. Two of the mubashirs (now relatives) were
of opinion that one of the rival applicants for the
position should be appointed kazi, and as their wishes
were not accorded to, they ceased to attend the
board, and as far as possible while retaining their
offices, they thwarted the action of the other muba-
shirs. Subsequently in 1878 other vacancies occurred.

in the bond. In 1888 the number of mushstirs was reduced to six, and two of them (the rlators), as it were, took no part in the administration, so that the management was left in the hands of the first four defendants. In 1891 four new mushstirs (defendants Nos. 6 to 9) were elected, and in that year the Advocate General at the relation of the two deposed mushstirs filed this suit against the newshavre. The former mair of the musjid was also made a defendant (No. 5). He had held the office of mair from 1879 to 1891, when he resigned. The plaintiff sought the irregularities which had taken place in the management in 1878, and prayed for the removal of the defendants (other than defendants Nos. 6 to 9) from the position of directors or mushstirs, and for an account against all the defendants, and charges made against the defendants in the plaintiff and the hearing:—(1) The neglect to take steps to supply the price of the kazi and the failure to keep up the proper number of the mushstirs. *Filed*, as to this, that subsequently to 1878 the mushstirs had no authority under the rules of 1834 to fill up vacancies as they occurred or to carry on the government of the musjid. Since that year the mushstirs were a provisionally elected committee kept up from time to time by co-optation, locally permitted by the Government to manage the affairs of the musjid until the original constitution could be restored or legally changed. That original constitution being for the time in abeyance. (2) The improper appointment in 1879 of one C (defendant No. 5) as mair. *Filed* that the mushstirs incurred no liability and deserved no censure for so doing. (3) The neglect to call for an annual account of the income and expenditure of the musjid under rule 6. *Filed* that this charge was not proved. (4) The neglect to purchase properties with the mair's income of the musjid as required by rule 4. Upon this point it was contended that the defendants should be charged with interest on the mair's funds, so as to make up for the loss of rents which would have been recovered if properties had been purchased. In answer to this claim, it was argued (a) that, under the circumstances, the mushstirs had no power to expend the funds of the musjid in purchasing property; and (b) that the claim was barred by limitation. *Filed* that the claim fell within art. 120 of the schedule to the Limitation Act (XV, c. 1 of 1877), and was barred except as to six years prior to the filing of the suit, but as to that period the Court refused to order accounts to be taken against the defendants. There had been no dishonesty or improper dealing with the funds of the musjid. The High Court at which the case could be put was that there had been error of judgment. In this the community had acquiesced. Moreover, the position of the parties had changed. Some of the mushstirs were dead, others had resigned, and were not defendants to the suit, and it would be difficult to enforce contribution against them. The Court was further of opinion that in any case, it was very doubtful whether a provisional committee like the mushstirs would have been justified in assuming the power of purchasing property. Had the property

MAHOMEDAN LAW—ENDOWMENT

—continued.

of the wukf cannot in any way affect the wukf.
BIKANI BHA v. SHUK LAL PODDAR

[I. L. R., 20 Calc., 116]

28. ———— *Wukf—Deed invalid as a wukfnama—Attempted family settlement in perpetuity—Ultimate, but illusory, gift for charitable purposes—An instrument, nominally a wukfnama expressly purporting to make property wukf, settled it in perpetuity on the family of the*

MAHOMED ISHAK v. RASAMAYA DRUG CHOWDHRI

[I. L. R., 23 Calc., 819]

[I. R., 23 I. A., 78]

29. ———— *Wukf—Charitable and religious trusts—Perpetuities, Rule*

lights at the tomb were of use to passers-by. Held on appeal, reversing the judgment of DAVIES J., that the instrument was not a valid wukf, and was void as contravening the rule against perpetuities.
KALELOOLA SANIB v. NUSSEERUDDIN SANIB

[I. L. R., 18 Mad., 201]

30. ———— *Wukf—Illusory dedication—Fathaha ceremony—Custom as a guide*

MAHOMEDAN LAW—ENDOWMENT

—continued.

31. ———— *Wukf—Illusory dedication—Settlement for benefit of descendants of the settlors—Held that a mere charge for some*

32. ———— *Revocation of endowment—Effect of revocation or improper conduct of trustees—A valid wukf cannot be affected by revocation or by the bad conduct of those responsible for the carrying out of the appropriator's behests, nor can it be alienated.*
DOFAL LUHED MULLICK v. KIRAMUT ALI

16 W. R., 116

33. ———— *Removal for misconduct—According to Shia law, a man who devotes property to charitable or other uses and*

34. ———— *Grant vesting—If mutually*

possession as manager by plaintiff herself and other widows of the plaintiff's deceased father-in-law, all which widows had some interests in the land under various deeds by which additions had been made to the original endowment; and defendant further pleaded that, under the original deed of appointment, plaintiff's husband could not alienate the property, and that plaintiff's possession would be a virtual alienation; and also that plaintiff's claim was barred by limitation, and that she could not hold the land without the sanction of the Government under Act XX of 1868.—*Held* that, although plaintiff's original appointment by her late husband during his lifetime was unauthorized, yet, as alienation in such a case would mean alienation of the subject of the endowment rather than its transfer to plaintiff, whose possession was not an adverse possession, plaintiff's possession did not defeat the purposes of the original appropriation, and could not be regarded as an alienation; and that in these circumstances, even though the property were wukf, there could be no defect in plaintiff's title. An appropriator of land to special purposes can, under Mahomedan law, confer the office of superintendant on another at any time. It was found in this case that defendant, as a descendant of the original appropriator, had succeeded to other properties which were quite distinct from the land in suit. **ABDOOL KHADEE R. FORAN BIKER**

[25 W. R., 542]

42. *Sajjadnashin, and mutual, Offices of—Primogeniture, Custom of—Eldest son's right to hold the offices—Wukf, Inheritance to—Predecessor in the office to appoint his successor, Right of—About three hundred and fifty years ago one S, the ancestor of the parties to the suit, came to Surat and settled there and became the primus inter primos (religious preceptor) of the Mahomedan community at that place. During his lifetime, as well as after his death, moveable and immovable property was from time to time dedicated to the religious office he and, after his decease, one or other of his descendants successively occupied. The plaintiff was the eldest, and the first defendant the second son of H, the last incumbent of the said office. In 1865 H, being ill, executed a *tanhiyannama* appointing the plaintiff his executor and successor. Subsequently H, having recovered, cancelled the same and appointed the first defendant his successor by three successive *tanhiyannamas*, the last being dated 3rd September 1881, a few days before H's death. The first defendant accordingly entered into possession and management of the office of *sajjadnashin* (or priest) and *khilafat* (deputy), and assumed the position of *mutawalli* (or manager) of the wukf property of the family. In 1882 the plaintiff brought the present suit to have it declared that on him, as the eldest son, had devolved the office of *sajjadnashin* and *khilafat* held by the family, and not on his younger brother, the defendant, and that he alone was entitled, as *mutawalli*, to take possession of and manage the wukf property. The plaintiff relied, firstly, on the appointment made by his father in 1785, and, secondly, on the fact of his being the eldest son of the last incumbent, to*

whom, he maintained, both by law and custom belonged the succession to the offices in question so long, at least, as such eldest son was in other respects a fit and proper person to succeed, which in his own case was not contested. The defendant denied that either by law or custom was the eldest son, as such, entitled to succeed, and relied on the fact of his appointment by his father. *Held* that the plaintiff had made out no case of a right to succeed his father in the offices in question. Not under the deed of appointment, because that was made by his father when he believed he was dying, and was subsequently on recovery cancelled, and was therefore inoperative, on similar principles to those which apply to the case of a *donatio mortis causa*; nor, secondly, under the general Mahomedan law, because that law is strongly against attaching any right of inheritance to an endowment; nor, thirdly, by reason of any custom, because no such custom as that contended for was established on the evidence. The evidence went to show that the eldest son did not uniformly succeed, and that, even when he succeeded, he did so by right of appointment, and not by right of primogeniture. **ABDUL KHADEE R. ZAIN SATAD HASAN BIKER**

I. L. R., 13 Bom., 555

43. *Appointment as manager—How far effectual.—An appointment as manager by the trustee for the time being of a Mahomedan religious endowment was held not effectual beyond the incumbency of the nominator. **MOHAMED BAKSH AHMED R. KHANEE BAKSH***

6 W. R., 277

44. *Shia—Disqualification.—The fact of a person being a Shia disqualified him for the supervision of a wukf made by a Sunni. **DOXAL CHAND MULLICK R. KRAMAT AHI***

16 W. R., 116

45. *Hereditary succession.—In a Mahomedan religious endowment, when it is essential that the superior or manager should have certain qualifications which succession by descent would not always ensure, the theory of hereditary succession is most unlikely and out of place. **SYED R. ALI AHMED***

[W. R., 1864, 327]

46. *Descent of office of—Females like that of sufiada-nashin, Mahomedan law, offices like that of sufiada-nashin should descend to persons in the male line, and those who are descended from females are regarded as not belonging to the family of the founder, but strangers. Where such an office has been once diverted for a sufficient cause (e.g., default of male issue) from a particular line of descent, it is liable to be brought back into the line of a previous holder when the person claiming under that holder is a descendant in the female line. **AMRUT HOSSAIN R. MONTOODER AHMED***

16 W. R., 193

47. *Temporal affairs—Performance of duties by female.—According to Mahomedan law, a woman may manage the temporal affairs of a mosque, but not the spiritual affairs connected with it, the management of the*

MAHOMEDAN LAW—ENDOWMENT

—continued

must. *Held* it was not the duty of the mashayirs to look into the account of each individual tenant. Under the rules the nazir and not the mashayirs, was entrusted with the collection of rents and it was his duty to see that the rents were not allowed to fall unduly into arrears. It was not shown that except at an exceptional time when the nazir was ill the

1891 when he resigned. Under the rules (see rules 2 and 7) he was appointed by the directors and was under their orders and was removable at their pleasure. It was contended at the hearing that he was not a proper party to the suit being merely the agent or servant of the directors and not a trustee. *Held* that he was properly made a defendant. Both

38 ————— Succession to management of endowment—Succession to endowed property—Rules of founder—Usage—Primogeniture—Where property has been devoted exclusively to religious and charitable purposes the determination of the question of succession depends upon the rules which the founder of the endowment may have prescribed.

not be authorized to find in favour of any rule of succession by primogeniture solely from the circumstance that the persons appointed were usually

MAHOMEDAN LAW—ENDOWMENT

—continued

the eldest sons GULAM RAHMATULLA SAHIB v. MOHAMMED ARBAH SAHIB 8 Mad, 83

39 ————— *Wakf property—Founder's right to appoint manager—Right of executors to nominate manager—Akribah*—Although, according to Mahomedan law the founder of a

relation) he cannot afterwards name a person as manager—the death of the manager or execution of the will properly construed in the context shows that it was intended to be used in

40 ————— *Misappropriation of funds Effect of on nature of trust—Construction of endowment or grant*—Where the mutawalli of an endowment sought to recover his surburakui right in two villages of which he had been dispossessed by a person who had obtained a decree against him personally and taken out execution against the endowment and the said judgment creditor contended—*Held* that the proceeds of the endowment had been appropriated to other purposes than those specified in the firmam creating it second,

grant was in the nature of a personal endowment

essential nature of his trust secondly that the question of the right of the plaintiff to succeed on the plaintiff's death

MOXXR

25 W R, 557

41 ————— *Alienation of*

urged that she had been ousted by defendant who was the son of a half brother of her husband; but the defendant contended that he had been put in

MAHOMEDAN LAW—ENDOWMENT

plus sale-proceeds will be subject to the endowment.

MAJNA BEGUM v. KHATA HOSSEIN AIR KHAS
[14 B. L. R., A. C. 86; 12 W. R., 488
UPHOLDING ON REVIEW, KHATA HOSSEIN AIR v.
MAJNA BEGUM 12 W. R., 344

58. *Waste committed by mulwalli*—*Liability to account*.—Where a mulwalli was proved to have been guilty of waste, the High Court ordered him to file in Court every six months a true and complete account of his income, expenditure, and dealings with the property belonging to the endowment. *JADAD HOSSEIN v. MAHOMED AIR KHAS* 23 W. R., 150.

60. *Suit for assertion of khadim rights*—*sale of office to which are attached conduct of religious worship and performance of religious duties*—*Custom*.—The plaintiffs instituted a suit for a declaration that they were entitled to perform the duties attached to that office for 21 days in each month, and during that period to receive the offerings made by worshippers at the dargah. They also claimed an injunction restraining the defendants from interfering with them in the exercise of that office. The plaintiffs claimed their khadim rights partly by inheritance and partly by purchase, a custom of transferability by sale having been long recognized. *Held* that the suit, being a claim to recognition of a certain duty, and, as such, entitled the khadims of a certain dargah and, as such, entitled the plaintiffs to a declaration that they were entitled to perform the duties attached to that office for 21 days in each month, and during that period to receive the offerings made by worshippers at the dargah. They also claimed an injunction restraining the defendants from interfering with them in the exercise of that office. The plaintiffs claimed their khadim rights partly by inheritance and partly by purchase, a custom of transferability by sale having been long recognized. *Held* that the suit, being a claim to recognition of a certain duty, and, as such, entitled the khadims of a certain dargah and, as such, entitled the plaintiffs to a declaration that they were entitled to perform the duties attached to that office for 21 days in each month, and during that period to receive the offerings made by worshippers at the dargah.

56. *Liability of wife's property in hands of widow to decree against husband*.—Where property is endowed (made wakf) by the proprietor, and as such devolves to his widow as trustee (mutwalli), it cannot be sold in satisfaction of a claim against him. *FIGAROPO v. MAHOMED MEHMET* 15 W. R., 76.

57. *Alienation by trustees without sanction of judge when voidable or void*.—A Civil Court of superior jurisdiction in powers exercised by the kazi. Before an alienation of trust property can be made by the trustee, the sanction of the kazi, in other words the judge, is essential. Where the trustees of a certain mosque, without obtaining the sanction of the judge sold the hands in dispute which formed a part of the trust property to the plaintiffs in order to raise money to meet the expenses of litigation and the repair of the mosque, *Held* that the sale was not merely voidable, but void. *Ismael Arif v. Mahomed Ghose I. T. R., 20 Cal., 834, distinguished. Mageswara Das v. Mahomed Abdullah, 7 Sel. Rep., 320, and Dawson Doss Sahoo v. Kunderooddeen, 2 Moore's I. A., 350, followed. SHAKIA CHAKRA ROY v. ABRAHIM KAPUR 3 C. W. N., 158*

58. *Mortgage*.—The fact that a mortgage is in existence over property at the time when it is set apart as an endowment does not invalidate the endowment under Mahomedan law. It is an endowment subject to a mortgage. If after leaving sufficient assets, his heirs are bound to apply those assets to the redemption of the mortgage, so that the endowment may take effect freed from the mortgage by the application of other assets of the endower. But, if necessary, the mortgagee may enforce the mortgage by sale of the land, and the endowment will be rendered void as against the purchaser under the mortgage, but not as against the heirs of the endower; as against the latter, the suit-

61. *Removal of manager*—*Misconduct*.—If a superintendent of an endowment misconducts himself, the Mahomedan law admits of his removal, and this is sufficient to protect the objects for which the trust was created. *HIDAYAT-ODDIN NISSA v. AZZUL HOSSEIN 2 N. W., 420.*

62. *Power of donor*.—The rule of Mahomedan law is removable for mismanagement, does not apply to the case of a trustee who has a hereditary proprietary right vested in him. It is essential for the exercise by the donor of the power of removing a superintendent, that such power be specially reserved at the time of the endowment. *GHUJAH HUSSAIN AIR ADAM ADAM TADARIAN AIR GHUJAH HUSSAIN AIR 4 Mad., 44*

MAHOMEDAN LAW—ENDOWMENT
—continued.

MAHOMEDAN LAW—ENDOWMENT

—continued.

mutwallis and were the persons on whom, on the death of the existing mutwallis, the office of mutwalli would fall by descent, if indeed it had not already fallen upon them, as alleged in the plaint, by abandonment and resignation. Wakf property cannot be alienated, and any person interested in the property restored to the trust. *PER MAJADAR, J.*—As a suit for possession, the suit was defective in form and could not be maintained. It was a suit for partition of a moiety of the lands, and the owner of the other moiety was not a party. The suit was, however, really a suit for a declaration that the lands were the immovable property of the mosque, and, as such, were not liable to alienation for the private debts of defendants Nos. 3, 4, and 5. The plaintiffs were entitled to sue for such a declaration, although they could not obtain actual possession. They were beneficiaries and had a right to sue under s. 42 of the Specific Relief Act (1 of 1877). *MAJASAR v. SAGWA BAKHSHI AIR 1 I. T. R., 24 Bom., 170*

59. *Liability of wife's property in hands of widow to decree against husband*.—Where property is endowed (made wakf) by the proprietor, and as such devolves to his widow as trustee (mutwalli), it cannot be sold in satisfaction of a claim against him. *FIGAROPO v. MAHOMED MEHMET 15 W. R., 76.*

57. *Alienation by trustees without sanction of judge when voidable or void*.—A Civil Court of superior jurisdiction in powers exercised by the kazi. Before an alienation of trust property can be made by the trustee, the sanction of the kazi, in other words the judge, is essential. Where the trustees of a certain mosque, without obtaining the sanction of the judge sold the hands in dispute which formed a part of the trust property to the plaintiffs in order to raise money to meet the expenses of litigation and the repair of the mosque, *Held* that the sale was not merely voidable, but void. *Ismael Arif v. Mahomed Ghose I. T. R., 20 Cal., 834, distinguished. Mageswara Das v. Mahomed Abdullah, 7 Sel. Rep., 320, and Dawson Doss Sahoo v. Kunderooddeen, 2 Moore's I. A., 350, followed. SHAKIA CHAKRA ROY v. ABRAHIM KAPUR 3 C. W. N., 158*

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MAHOMEDAN LAW—ENDOWMENT
—continued.

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—continued

latter requiring peculiar personal qualifications
HUSSAIN BIKER : HUSSAIN SHERIF 4 Mad, 23

48 ————— *Wukf or endowed property—Office of mutwalli, nature of—Transfer of or performance of duties of by agent—The office of a mutwalli is a trust which a woman equally with a man is capable of undertaking but it is a personal trust and the office may not be transferred nor the endowed property conveyed to any person whom the acting mutwalli may select. The word deputy in book 9 Ch 1 page 511 of Baillie's Mahomedan Law signifies some one who as an agent may be employed to perform the duties of a mutwalli.*

HOSSAIN

[**I L R, 8 Calc., 732 10 C L R., 529**]

49 ————— *Woman performing duties of manager of endowment—A woman is*

50 ————— *Appointment of the religious superior of a Mahomedan institution*

been raised whether the deceased had been of sound and disposing mind at the time of making it. The first Court found that he had been of sound mind at the time but the Chief Court on appeal reversed this finding and added that he had been in their opinion unduly influenced. As these questions

different from that of the mental capacity of the deceased in appointing their lordships found no evidence of either coercion or fraud under which such influence must range itself citing *Boysse v Rosador* 44, 6 H L C 1. They found no evidence of the exercise of any influence. The decision of the Chief Court was therefore reversed, and the decree of the first Court, in favour of the

MAHOMEDAN LAW—ENDOWMENT

—continued

plaintiff was maintained **SAYAD MUHAMMAD v FATHER MUHAMMAD I L R 22 Calc, 324 [L R, 22 I A, 4**

51 ————— *Alienation of endowed property—Wukf—Limitation—According to Mahomedan law wukf or endowed property is alienable. Wukf property is not the less wukf property because of the use of the words *man and atamgha* in the grant provided the grant clearly appears to have been intended for charitable purposes. A mutwalli or superintendent of an endowment is not barred by limitation if he acts to recover possession of endowed property within twelve years from the date of his appointment. **JAWUN DOSS SAHOO v KUBAIRROOH DEEN 8 W R, P C, 3 3 Moore's I A, 390***

52 ————— *Alienation by mutwalli—In dealing with the mutwalli of an endowment it is not necessary for the purchaser to*

ALI v SOWLTOONNIESA BIKER W R, 1864, 242

53 ————— *Grant of miras lease—According to Mahomedan law the trustees of an endowment cannot create a valid miras tenure at a fixed rent by granting a lease of any portion of the wukf property. **SOOFAT ALI v ZUNEROODDEEN 5 W R, 168***

54 ————— *Alienation of land devoted in part to religious purposes—Where the whole of the profits of land are not devoted to religious purposes but the land is a heritable property burdened with a trust—e.g. the keeping up of a saint's tomb, it may be alienated subject to the trust. **FULTOO BIKER : BRUBERT LALL BRUBERT 10 W R, 299***

55 ————— *Alienation of wukf property—Suit to set aside such alienation—Right to sue—Civil Procedure Code (Act XIV of 1832), s 539—Mahomedan law—Plaintiffs sued to recover possession of certain lands alleging that they had been granted in wukf to their ancestor and his lineal descendants to defray the expenses for, or connected with the services of a certain mosque, that their father (defendant No 3) had conveyed (defendants Nos. 4 and 5, who were mutwallis in charge of the said property had illegally alienated some of these lands and had also ceased to render any service to the mosque, whereupon they (the plaintiffs) had been acting as mutwallis in their stead. They therefore claimed to be entitled as such to the management and enjoyment of the lands in dispute. It was contended (inter alia) that the plaintiffs could not sue in the lifetime of their father (defendant No 3) he not having transferred his rights to them. Held that the plaintiffs were entitled to sue to have the alienation made by their father and consents set aside and the wukf property restored to the service of the mosque. They were not merely beneficiaries, but members of the family of the*

MAHOMEDAN LAW—GIFT—continued.

2. CONSTRUCTION—continued.

law, no validity to create a proprietary right in the said share after the grantor's death. KATARBAT v. ATAM KHAJ. I. L. R., 7 Bom., 170.

3. VALIDITY.

7.—Death-bed gift.—*Donatio mortis causa*.—Died of gift.—According to the Mahomedan law, in order to make a gift operate as a *donatio mortis causa*, the delivery must be upon the condition that it should become effectual as a gift on the death of the donor. Where therefore it was found that a deed of gift was executed in the last illness of the donor, and was in the possession of the donee after her death,—*Held* that this was not enough to make it operate as a *donatio mortis causa*, but that it was necessary to find the further fact, whether the deed was delivered by the donor before her death and whether such delivery was in contemplation of death, and with the intention that it should become effectual on the death of the donor. NASSERJI BIRJE v. ASHRAF ALI. Marsh., 315 : 2 Hay, 168.

8.—Legacy.—According to Mahomedan law, a gift on a death-bed is viewed in the light of a legacy. ASHMOODJAN v. SHAKBA JHAJORS. 2 Hay, 345.

9.—Gift in contemplation of death.—*Will*.—According to the Mahomedan law, a gift made in contemplation of death, though not operative as a gift, operates as a legacy. Ordinarily it covers to the legatee's whole property, the remaining third of the deceased's whole property, the remainder being a will carries the whole property. I. L. R., 152.

10.—*Will*—Persons labouring under sickness of which he dies.—According to Mahomedan law, if a person executes a gift while labouring under a sickness from which he never recovers, and which ultimately proves fatal to him, effect can be given to the instrument only to the extent of one-third. KUREKHAN v. MUTARRIK BAKHT W. R., 1864, 221.

11.—Consent of heirs.—A deed of gift, such as a tunkamah, executed at a time when the grantor was labouring under a sickness from which he never recovered, cannot operate save as a will. If such a death-bed gift or will is made in favour of one who is an heir, the will or gift, so far as it relates to that heir, will be inoperative without the consent of the other heirs. ASHRAFFUNNISSA v. AZEEMX. BARODA KOORAY I. W. R., 17.

12.—*Leave granted during illness*.—A mortuary lease, extended where the grantor was dangerously ill and in contemplation of death, was held to be a death-bed gift, and his natural heirs declared incapable of taking anything under it except their shares of the defendant's property according to Mahomedan law. BAKHT HOSSAIN v. KUREKHAN. 3 W. R., 40.

2. CONSTRUCTION—continued.

any part of the ancestral estate of her husband. The first instrument, *inter alia*, stated as follows: "I declare and record that the aforesaid sstr-in-law may manage the said villages for herself and apply their income to meet her necessary expenses and to pay the Government revenue." *Held* that these words did not cut down previous words of gift to what in the Mahomedan law is called an *ariz*; and that the transfer was not a mere grant of a license to the widow to take the profits of the land receivable by the donor nor a grant of an estate only for the life of the widow. It was a hibab-bil-*waqf*, or gift for consideration, granting the villages absolutely. MAHOMED FAIZ AHMED KHAJ v. GHULAM AHMED KHAJ. I. L. R., 3 All., 490.

5.—Transfer of absolute estate.—*Condition*.—*Strin law*.—*Shah law*.—The owner of a house made a gift thereof to certain persons "for their residence, and that of their heirs, generation after generation," declaring that, if the donees sold or mortgaged the house, he and his heirs should have a claim to the house, but not otherwise. *Held* that under Mahomedan law, whether that by which the house passed by the gift to the donees absolutely, the declaration by the donor as to the effect of an alienation by the donees being in the nature of a recommendation, and not having the effect of limiting the estate in the house itself. MASIR HICAR v. STAGHA BEERY. I. L. R., 5 All., 505.

6.—Deed of gift.—*Will*.—*Validity of declaration of title*.—*Held* that a document to the following effect was a deed of gift and not a will: "I have no children. Therefore my own brother, Mr Hemdoolah alias Chetay Sahab, in his lifetime placed in my lap his infant son, Mr Rabbul, of his own free will and accord. From that day, having taken the said Mr Sahab into my family, I adopted him as my son. Consequently he is being brought up entirely by me, and he alone is also my heir. And I have appointed him the owner of all my goods and property. I have made over the same to the possession of the said Mr Sahab. I have a share in the goods and property of my husband, Mr Afzaluddin Khan Sahab, the Nawab of Surat. The owner thereof also is the same Mr Sahab. Therefore in my lifetime should this property come into my hands, I will also deliver the same into the possession of the said Mr Sahab. Because the said Mr Sahab being the heir of all my goods and property, I have constituted him the possessor thereof by virtue of ownership. He is therefore the owner. And after me, should this property be divided, then the said Mr Sahab is the owner and absolutely entitled to receive my portion by the aforesaid right, by the right of ownership of my share, from the Court of His Honour the Agent. No one shall oppose him." *Held* further that, even if the direction of the above document as to making the grantee of the husband's property be regarded as a declaration of title, such declaration had, according to Mahomedan

MAHOMEDAN LAW—ENDOWMENT

—continued

63 ————— *Misconduct* —
Where the plaintiff sued to recover certain property as well on the ground that the mutwalli and his ancestor (a former mutwalli) had misconducted themselves by selling to some of the defendants the property which was the subject of the endowment. *Held* that as plaintiff had shown no title either as heir or otherwise, to partake of the benefit of the

[10 W R., 458

of talukdar and from certain lands thereto appertaining on the ground that he had by the authority vested in him already discharged M from employment in consequence of disobedience the alleged cause of action being an order passed by the Civil Court decreeing to the defendant a quantity of land belonging to the establishment notwithstanding the superintendent's objection that M was no longer talukdar. *Held* that the plaintiff's cause of action was correctly stated for it was by the order in question that his nominee was put aside and the defendant declared to have a right to the land as talukdar and that the defendant's claiming to hold independently of the superintendent was an act of the gravest disobedience warranting the plaintiff's interference and the exercise of his authority. *Held* too that the suit was not barred by limitation as the defendant held his office subject to the general control and authority of the superintendent, both parties executing the same trust. *MEHER ALI v. GOLAM NUSSEF*

[11 W R., 333

65 ————— *Rule that revenue*

income relates to such managers or mutwallis as have no beneficial interest in the usufruct of the endowed properties or are strangers to the endowment. Taking into consideration the nature of the institution the character of the grant and the position of the *sajjadnashin* the rule was held not to apply to the *Sassurim khankah*. *MAHOMED ALI v. SYED DIT alias NAWAB MEAN* I L R., 20 Cal., 810

MAHOMEDAN LAW—ENDOWMENT

—concluded

The *sajjadnashin* is not liable to income tax in

[I L R., 27 Cal., 674

MAHOMEDAN LAW—GIFT.

| | |
|----------------------|------|
| | Col. |
| 1. LAW APPLICABLE TO | 5642 |
| 2. CONSTRUCTION | 5643 |
| 3. VALIDITY | 5644 |
| 4. REVOCATION | 5663 |

See COMPROMISE — CONSTRUCTION ENFORCING EFFECT OF AND SETTING ASIDE DEEDS OF COMPROMISE

[8 Bom., A C., 77

See DEED—CONSTRUCTION

[I L R., 13 All., 409

See LIM TATION ACT 1877 ART 91

[I L R., 11 All., 458

1 LAW APPLICABLE TO

1 ————— Law of equity and good conscience—*Cases of inheritance marriage and caste* —The application to Mahomedans of their own laws in cases other than those coming under the denomination of inheritance marriage and caste (e.g. in case of gifts) is the administering of justice according to equity and good conscience. *ZOHOROODDEEN SIRDAR v. BANARMOOLA SIRCAR* W R., 1864, 185

2 ————— Questions as to gift arising in suits—*Bengal Civil Courts Act VI of 1871, s. 21*—Under s. 24 of Act VI of 1871 Mahomedan

[Agra, F B., Ed 1874, 283

2 CONSTRUCTION

3 ————— Donee from Mahomedan widow—*Title*—*Held* that a donee holding from a Mahomedan widow does not acquire a better title to the property than the donor hers if he is MAHOMED NOOR KHAN v. HUR DYAL 1 Agra, 67

4 ————— Gift for consideration—*Revocable grant*—*Construction of instrument of gift* —One of two brothers co-sharers in ancestral lands died leaving a widow who then upon becoming entitled to one fourth of her husband's share of the family inheritance without relinquishing her right to claim her share, in lieu thereof she received an allowance of cash and grain. The surviving brother made an arrangement with her, which was carried into effect by documents. By one instrument he granted two villages to her. By another she accepted the gift, giving up her claim to

3. VALIDITY—continued.

2. VALUATION—continued.

the deed of evil, the plaintiff is not in a position to disturb it; and it is quite immaterial in such a case whether the plaintiff's conduct was or was not given. *Manowad Zuercher v. Herlihy*.

25. [Illegible text]

bed—will—A Mahomedan widow, as far as I know, has no right to dispose of her husband's property in her own life-time, and it is always to whomsoever she chooses to bequeath it. The gift will not be valid unless in writing, and would be looked upon as a will, and be of no effect beyond a certain limit. I have not heard that any Mahomedan woman has ever been allowed to dispose of her husband's property in her own life-time. I have not heard that any Mahomedan woman has ever been allowed to dispose of her husband's property in her own life-time.

26. Give to take off at 44 in.

27. - Delivery of possession

Possession with notice - See title 1

Maintained by executor of estate of deceased plaintiff, who was at the date of death a Mohammedan Jew. (The Kopylov v. Anny)

[I.L.R., 10 Mod., 189]

of which she is found in 1860.

[illegible][illegible]

1. The first of these is the fact that the
 2. of the world is not a uniform one, but
 3. of the world is not a uniform one, but
 4. of the world is not a uniform one, but
 5. of the world is not a uniform one, but
 6. of the world is not a uniform one, but
 7. of the world is not a uniform one, but
 8. of the world is not a uniform one, but
 9. of the world is not a uniform one, but
 10. of the world is not a uniform one, but

110

1. The first step in the process is to identify the problem. This involves gathering information about the situation and understanding the needs of the stakeholders involved.

[illegible]

1. 4월 4일 : 목요일
 2. 4월 5일 : 수요일
 3. 4월 6일 : 목요일
 4. 4월 7일 : 금요일
 5. 4월 8일 : 토요일
 6. 4월 9일 : 일요일
 7. 4월 10일 : 월요일
 8. 4월 11일 : 화요일
 9. 4월 12일 : 수요일
 10. 4월 13일 : 목요일
 11. 4월 14일 : 금요일
 12. 4월 15일 : 토요일
 13. 4월 16일 : 일요일
 14. 4월 17일 : 월요일
 15. 4월 18일 : 화요일
 16. 4월 19일 : 수요일
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 21. 4월 24일 : 월요일
 22. 4월 25일 : 화요일
 23. 4월 26일 : 수요일
 24. 4월 27일 : 목요일
 25. 4월 28일 : 금요일
 26. 4월 29일 : 토요일
 27. 4월 30일 : 일요일

MAHOMEDAN LAW—GIFT—continued.

3 VALIDITY—continued.

13. *Gift by person labouring under disease*—Under the Mahomedan law, the term "marz ul-maut" is applicable not only to diseases which actually cause death, but to diseases from which it is probable that death will ensue, so as to engender in the person affected with the disease an apprehension of death. Under the same law, a person labouring under such a disease cannot make a valid gift of the whole of his property until a year

14. *Gift during mortal illness—Donatio mortis causa—Marz-ul-*

applicable to marz ul-maut gifts, several questions

capacitate him from the pursuit of his ordinary avocations or standing up for prayers, a circumstance which might create in the mind of the sufferer an apprehension of death? (4) Had the illness continued for such a length of time as to remove or lessen the apprehension of immediate fatality or to accustom the sufferer to the malady? The limit of one year, mentioned in the law books, does not lay down any hard and-fast rule regarding the character of the illness, it only indicates that a continuance of the malady for that length of time may be regarded as taking it out of the category of a mortal illness. HASSANAT BIBI v. GOLAM JAFFAR alias FAKHER-ULLAH. 3 C W. N., 57

15. *Absence of immediate apprehension of death—"Marz ul-maut"*

MAHOMEDAN LAW—GIFT—continued.

3 VALIDITY—continued.

16. *Absence of immediate apprehension of death—Sealle*—A gift by a sick person is not invalid if at the time he made it he was in full possession of his senses and there was no immediate apprehension of death. BOURGAIN v. SULEYMAN. I L R., 9 Bom., 148

17. *Gift in lieu of debt for dower—Sale—Dower*—Held that the provisions of the Mahomedan law applicable to gifts

18. *Will—Disposition in favour of heir—Consent of other heirs*—A

invalid. Held that the instrument, though pur-

consent of other heirs, and those conditions not having been satisfied it not only fell to the ground, but the parties stood in the same position as if the document had never existed at all. WAZIR KHAN v. ALFAR ALI. I L R., 9 All., 357

19. *Death bed gifts—Consent of heirs—Musha—Delivery of possession*

was proclaimed by beat of tom-tom, and that the tenants were called upon to attend to the donees, who subsequently collected rent. The widow took no exception to the gifts, but after two years one of the daughters brought this suit to have them set aside as invalid and to recover her share as an heiress of her father. Held (1) on the evidence that the attestation of the heirs was regarded by all the parties concerned as evidence of consent, and that they did consent to the death-bed gifts at the time they were made, (2) that this consent not having been revoked on the donor's death, and there having been sufficient delivery of possession, the gifts were

MAHOMEDAN LAW—GIFT—continued

3 VALIDITY—continued

Mahomedans does not cure the want of delivery by the donor *Mogulsha v. MAHAMAD SAHEB*

[1 L. R., 11 Bom., 517]

30 ——— Gift of undivided property
—Musha, or confusion—Change of possession—

British Government so that they form for revenue purposes distinct estates each having a separate number in the Collector's books and each liable to the Government only for its own assessed revenue the

AMBERGOONISSA KHATOON v. ABADOONISSA KHATOON
[15 B. L. R., 87 23 W. R., 208
L. R., 2 I. A., 87]

31 ——— Gift of property not in possession—Gift of zamindaris let out on lease and malikana rights—Musha as applied to gifts of unpartitioned and undivided lands—The rule of Mahomedan law that no gift can be valid unless the subject of it is in the possession of the donor at the time when the gift is made, has relation so far as it relates to land to cases where the donor professes to give away the possessory interest in the land itself,

the whole of which is let out on lease to tenants, invalid. Nor is there any principle by which to

32 ——— Hiba, or deed of gift—Gift by husband to wife—Possession—Continued receipt of rents by husband—Husband, Manager for wife—Gift of "musha" or undivided part—Subsequent partition—In 1871 H. G., a Mahomedan, executed a formal hiba or deed of gift,

MAHOMEDAN LAW—GIFT—continued

3 VALIDITY—continued

to his wife the defendant of a house belonging to himself but let out to tenants and duly registered the deed. In 1866-77 he caused the house to be transferred into the name of his wife in the municipal and fazandari books. After the execution of the deed of gift and down to the time of his death in 1884, H. G. continued to collect the rents as before and they were entered in his books and drawn upon for family purposes in the same manner as they had always been. In 1881-82 H. G. had an account of the rents of the house prepared in his wife's name from 1871-'2 up to date. Held that the above circumstances afforded sufficient evidence of possession having been given to the defendant either in 1871 or 1876, to satisfy the requirements of Mahomedan law. H. G., being the husband of the defendant would naturally continue to collect the rents as her manager even when he regarded himself as having parted with the ownership to his wife which the above mentioned circumstances sufficiently showed that he did. In 1883 H. G. executed a second hiba duly registered to the defendant of an undivided moiety of the house in which he and the defendant resided and to which H. G. and his brother were entitled in equal shares. No partition had been made between H. G. and his brother when H. G. died. Held that the gift was invalid as being a gift of a musha or undivided

33 ——— Pension—Gift of musha—Undivided part—Ascertained share—Transfer of possession—Mutation of names—Delivery of title deeds—Bengal Civil Courts Act (VI of 1871) s. 24—Pension Act (XXIII of 1882) s. 24

whole pension. No mutation of names was effected in the Government registers, but the deed of gift and the sanads in respect of which the pension had

delivery or transfer of possession was, under the same

MAHOMEDAN LAW—GIFT—continued.

3. VALIDITY—continued.

indivisible thing was valid under that law. KASIM HUSSAIN v. SHARIF-UD-DIN. 5 ALL, 285

[I. L. R., 5 ALL, 285]

44. — Gift with restriction as to alienation—*absolute gift*.—Plaintiff, during his son's minority, gave certain property to him, and on the delivery of possession got from him a document estimating (1) that he would not alienate; (2) that at his death the property should return to the father. This document was deposited with the father, and not heard of until the property was taken in execution for the son's debt, many years after the gift. *Held*, that by Mahomedan law, as well as by the general principles of law, such a restriction on alienation, especially after the gift had become complete long before, is absolutely invalid. *ABDUL KADIR v. NA-CHIRAT, JAGANNATH v. VIKRAMABAI*. 6 Mad, 356

45. — Gift coupled with condition. *Absolute gift*.—A testatrix was entitled to Government notes under a gift coupled with the condition that she was to receive only the interest during her life, and that after her death the notes were to be held in trust for all her heirs. *Where*—Whether, under the Mahomedan law, the gift made to the testatrix was not a gift to her absolutely, the condition being void. *SULTAN KAN v. DONAH-ATI KHAN*. [I. L. R., 8 Cal, 1

46. — Possession, Necessity of—To make a deed of gift valid under the provisions of the Mahomedan law, seisin is necessary; if the donor is not in possession at the time, the gift is void. *ABDOONISSA KHATOON v. AKERHOONISSA KHATOON*. 9 W. R., 257

47. — Possession given and accepted.—Under the law of the Sherra, gifts are not valid until possession is given by the donor and taken by the donee. *OHUBUR REZA v. MAHOMED ALI MEER*. 16 W. R., 88

48. — *Hibba*.—Possession is under the Mahomedan law absolutely necessary to establish the validity of a *hibba*. *SHAHAN BIRJE v. SHIB CHANDER SHAHA*. 22 W. R., 314

49. — *Contingent or postponed gift*.—Possession not immediate.—Under the Mahomedan law, a gift cannot depend upon a contingency or be postponed, but possession must be immediate. *KOSHUR JAHAN v. KASAT HOSSAIN* [5 W. R., 4

50. — *Donor remaining in possession*.—According to Mahomedan law, a gift is invalid when the donor is to remain in possession during his lifetime. *ZOHOROODDEEN SHARAF v. BAHAROOTAH SIRGAR*. W. R., 1864, 185

51. — *Donor remaining in possession*.—Deed of gift—*Consideration*.—The policy of the Mahomedan law is to prevent a testator

MAHOMEDAN LAW—GIFT—continued.

3. VALIDITY—continued.

interfering by will with the course of the devolution of property according to law among his heirs. But a holder of property may defeat the policy of the law by giving in his lifetime the whole or any part of his property to one of his heirs, provided he complies with certain forms. This may be done by a deed of gift without consideration, or by deed of gift for consideration. A conveyance by deed of gift without consideration is invalid, unless accompanied by delivery of the thing given, so far as it admits of delivery. In the case of a gift for consideration, the delivery of possession is not necessary for its validity, and no question arises as to the adequacy of the consideration; but there must be an actual payment of the consideration by the donee, and a *bona fide* intention on the part of the donor to divest himself in present of the property, and to confer it on the donee. It is incumbent on those who set up transactions of this nature to show very clearly that the forms of the Mahomedan law, whereby its policy is defeated, have been strictly complied with. *KHA-DOONHOUSSEIN v. ROOSTHAN JERAN*. [I. L. R., 2 Cal, 184; 26 W. R., 36

I. R., 3 I. A., 912

52. — *Gift in futuro*.—Under the Mahomedan law, a gift is not valid unless it is accompanied by possession, nor can it be made to take effect at any future definite period. A document containing the words, "I have executed an *ikrar* to this effect, that, so long as I live, I shall enjoy and possess the properties, and that I shall not sell or make gift to any one; but, after my death, you will be the owner, and also have a right to sell or to make a gift after my death,"—*Held*, to be an ordinary gift of property "in futuro," and as such invalid under Mahomedan law. *YUSUF ALI v. CORRECTOR OF*

53. — *Delivery*.—Donee in physical possession prior to gift.—*Formal delivery*.—Manifest intention of donor to transfer.—For the purposes of completing a gift of immovable property by delivery and possession, no formal entry or actual physical departure is necessary; it is sufficient if the donor and donee are present on the premises, and an intention on the part of the donor to transfer has been unequivocally manifested. *IMRAN v. SUTRAN*. [I. L. R., 9 Bom, 146

54. — *Gift made on death-bed*.—*Delivery of possession*.—Where property, the subject-matter of a gift made by a Mahomedan during his death illness (marriage), was in the hand of the donee as manager or agent of the donor, it was held that the possession of the donee as such manager or agent was not such possession as would render it necessary to the validity of the gift that there should have been an actual or formal delivery to him of possession of the property. *LAUREN HOSSAIN v. MATRAN*. 5 C. I. R., 91

MAHOMEDAN LAW—GIFT—continued.

3. VALIDITY—continued.

37 ——— Interest of donees undefined by gift—*Receipt by donees of rent of land*

which had been let by them as the managers of the donor, is not a sufficient taking possession to satisfy the requirements of the Mahomedan law. *VALIMIA ALIMIA v. GULAM KADAR MOHIDIN*

[8 Bom., A. C., 26]

38. ——— Gift in lieu of dower—*Indefiniteness*—In a suit upon a hibanama alleged to have been executed by the husband of the plaintiff, giving her twenty two shares in a village as a gift in lieu of dower, the Civil Judge dismissed the suit upon the ground that the omission of the amount of the dower rendered the instrument of no validity according to Mahomedan law. *Held* (reversing the decree of the Civil Judge) that the suit was maintainable, the instrument expressing plainly the specific shares

36 ——— Gift without defining respective shares of donees—*Act VI of 1911*,

or detail of their respective shares whereby a young

his death in respect of a portion of the property

competent to manage land paying revenue. *Z* exe-

MAHOMEDAN LAW—GIFT—continued.

3. VALIDITY—continued

cuted a deed of gift of his estate. He never came into possession of the second portion of the property. *Held*, with reference to the question whether the donor had fulfilled the requirements of Mahomedan law by putting the donees into immediate possession, that the deed, having operated in respect of the first portion of the property which *Z* had become possessed of under the will, operated in respect of the second. *NIZAM-UD-DIN v. ZABEDA BIBI*

[6 N. W., 338]

40 ——— Undefined gift—*Gift by father to minor son*—The rule that an undefined gift of joint undivided property, mixed with property capable of division, is invalid by Mahomedan law, does not apply to a gift by a father to a minor son. *WAJEED ALI v. ABDOL ALI*

W. R., 1864, 121

41. ——— Gift of defined share in land—*Separate property*—A defined share in a landed estate is a separate property, to the gift of which the objection which attaches under Mahomedan law to the gift of joint and undivided property is inapplicable. *JIWAT BARNH v. IMTIAZ BROOM*

I. L. R., 2 All, 93

42. ——— Gift of defined share of property—*Possession—Haniffa Code—Imamia Code*.—A Mahomedan bequeathed his property to his two nephews, Gulam Rasul and Gulam Ali, as joint tenants. Gulam Ali died, leaving a widow and a daughter, who continued to be joint tenants with Gulam Rasul, but the latter continued in exclusive possession of the property, subject to any claim which they might establish to a share in, or a charge upon, it. Gulam Rasul, by a written instrument, made a

ated by the mere reservation of the income of the

MAHOMEDAN LAW—GUARDIAN.

See MAHOMEDAN LAW—MARRIAGE.

[Bom., 236

1. Right of guardianship—

Mother—Father—Infant under seven years—

According to Mahomedan law, the mother is entitled,

in preference to the father, to the custody of an

infant under seven years of age. FORTER ALI

SHAH v. MAHAMED MUKEMM OODER. FORTER

ALI SHAH v. FUZEELUTTUNNISSA BEBE

[W. R., 1864, 131

2. Male child—Female child—According to

Mahomedan law, a mother is entitled to the

custody of her child, if such child be a male, till it

shall have attained the age of seven years; if such

child be a female, till it shall have reached the age

of puberty. IN THE MATTER OF YAHYIA ALI

[2 Hyde, 63

3. Custody of female minors before puberty—Mother's

right.—By the Mahomedan law the mother is en-

titled to the custody of a female minor who has not

attained her puberty, in preference to the husband.

MUR KADIR v. ZULTEENA BIBI

[T. L. R., 11 Cal., 649

4. Minor, Custody of—Mother, Custody

of—Mother—According to the Shiah school of the

Mahomedan law, a mother is entitled to the custody

of her female children unless she has been guilty of

unchastity. IN THE MATTER OF HOSSAIN BEGUM

[T. L. R., 7 Cal., 434

5. Mother—Father—

uncle—Minors, Custody of.—According to Maho-

medan law, a mother has a preferential right over the

paternal uncle to the guardianship of minors and to

the custody of their persons. ALIMODEN MOATEZ

v. SYROORA BIBER

6 W. R., 125

6. Mother, Re-mar-

riage of.—Under the Mahomedan law, the mother

is of all persons best entitled to the custody of infant

children up to the age of puberty; but her right is

made void by marriage with a stranger. BADDU

BIBER v. FUZULOOTAH

20 W. R., 411

7. Custody of minor

son—Mother, Right of.—According to the Maho-

medan law, a mother has the right of custody of the

person of her minor son up to seven years of age.

Quere—Where she does not maintain him, has she,

as against a relation on the father's side, the right

of custody and control after that age? IN THE

MATTER OF AMERUNNISSA

11 W. R., 297

8. Gift not having

attained puberty—Grandmother—Maternal grand-

mother as guardian—Act IX of 1861, s. 3.—Under

the Mahomedan law, the grandmother is entitled to

the guardianship of a minor female child in prefer-

ence to the child's paternal uncle, where such child,

although married to a minor, has not attained puberty.

BHOONA v. ELANI BUX. T. L. R., 11 Cal., 574

MAHOMEDAN LAW—GIFT—concluded.

3. VALIDITY—concluded.

of the transfer under the settlement. MUHAMMAD

ESUPH RAYHAN v. PATTANSA AHMAL

[T. L. R., 23 Mad., 70

4. REVOCATION.

75. Power of revocation.—In a

revocable gift—Delivery of possession.—In a gift

for arrears of rent due on defendant's patent taluk,

though the rate was admitted, it was pleaded that,

in consequence of a dacoity having taken place in

the defendant's house, she had been allowed by the

plaintiff (her brother-in-law) a remission of rent an-

usually for a certain number of years, and defendant

professed her readiness to pay if the remission were

allowed. Plaintiff's agreement set forth that, in con-

sequence of defendant's house having been plundered,

she was entitled to assistance to enable her to replace

what he had lost, and that the rajah (zamindar), not

being able to make good the amount, at once took

this method of assisting his connexion. Held that

the gift (or remission of rent for the years in suit)

was complete at the termination of each year; in

other words, delivery had been made to the donee, and

it could not be recalled under the Mahomedan law,

which is precise as to the impossibility of revoking a

gift after delivery without the decree of a Judge or

the consent of the donee. ENAYT HOSSAIN v.

KHOORUNNISSA

11 W. R., 320

76. Power of revoking gift—

Revocable gifts.—Certain lands, choultries, and

writing, given to the brother of the donor and his

heirs for the purpose, in perpetuity, of keeping in

repair the choultries and affording strangers the

charities of shelter, and, if circumstances permitted,

food also, as well as for supplying the wants of the

donees, with clauses restraining alienation by them.

Held that the instrument effected a transfer of the

property to the donees subjected to the trust of

applying the profits of the lands, etc., in perpe-

revocable, whether the transaction be viewed as a

pure trust or as a gift. The power of revoking

gifts is given under the Mahomedan law only in

the case of private gifts for the donee's own use,

no relationship existing between the donor and the

donee. GUTAI HOSSAIN SAIB v. AGAI AGAI TAD-

ADAH SAIB. AGAI AGAI TADADAH SAIB v. GUTAI

HOSSAIN SAIB

4 Mad., 44

77. Power of revocation—

Alienation by donee—Gift by father to son.—By

Mahomedan law there can be no revocation of a

gift by a father to a son when the donee has

alienated the thing given. WASEED ALI v. ARBOO

ALI

W. R., 1864, 121

78. Deed of gift

made in contemplation of marriage.—A hibba-

iwaz, or deed of gift made in contemplation of

marriage, is not a revocable instrument. KURSOON

v. AMERUNNISSA

1 Hyde, 150

MAHOMEDAN LAW—GIFT—continued

3 VALIDITY—continued

68 ————— *Hiba bil iwar*—
Gift made in consideration of services rendered—
Donor not in possession—Possession not delivered
to donee—The fundamental conception of *hiba bil iwar*
or a gift for an exchange as understood in the
Mahomedan law, is that it is a transaction made up of
two separate acts of donation, i.e., of mutual or
reciprocal gifts of specific property between two
persons, each of whom is alternately donor and donee
It does not include the case of a gift in consideration
only of natural love and affection or of services or

Hossein v Sharif un nissa I L R 5 All, 205
Sahib un nissa Bibi v Hafiza Bibi I L R 9

and *Hazara Begum v Hossein Ali Khan 12*
W R, 498 referred to *RAHIM BAKSH v MUHAM-*
MAD HASSAN I L R, 11 All, 1

69 ————— *Possession*—
Gift of property attached by Collector for
arrears of revenue—*N-W P Land Revenue Act*

Act No XIX of 1873 All that was necessary to a
valid gift was that the donor should transfer posses-

UD DIN SHAH I L R, 21 All, 100

70 ————— *Incomplete gift*
—Absence of relinquishment by donor—Where a

71 ————— *Validity of gift*
—Possession—“*Muska*”—A deed which was
found in effect to be a deed of gift comprising
the whole of the property was executed on the
25th of the month of the year 1290
The deed was given to the donees in

MAHOMEDAN LAW—GIFT—continued

3 VALIDITY—continued

proprietary possession of the aforesaid property as
my representatives” Mutation of names was subse-

15 *Cale 681 L R, 15 I A 81*, and *Muhammad*
Mumtaz Ahmad v Zubaida Jan I L R, 11 All,
460 L R, 16 I A, 205 referred to *SAJJAD*
AHMAD KHAN v KADRI BEGAM

[*I L R, 18 All, 1*

72 ————— *Alleged gift by*
a Mahomedan father to his son—Benami transac-
tion—Evidence of transfer of ownership—Govern-
ment securities were indorsed and delivered by a
Mahomedan father to his son in the presence of the
local Treasury Officer On the quest on raised after
the father's death whether this was intended to
transfer the ownership, or was a benami transac-

of the interest The High Court found that the owner-
ship remained in the father On a review of the
possession of the parties at the time, and of their
subsequent conduct down to the father's death the
Judicial Committee affirmed the judgment of the High
Court on the evidence pointing out that the first
Court's theory of the reservation differed from the
“*what actually*
IBRAHIM

9 All, 267
L R, 24 I A, 1

73 ————— *Gift not perfected*
by possession—Necessity of delivery of posses-
sion—Registration—Under the Mahomedan law, a
registered deed of gift is not valid if it is never
perfected by possession The Mahomedan law re-
quires that the donor should be in actual or at
least constructive possession and that he should give
actual or at least constructive possession to the
donee Registration is not equivalent to possession
ISMAL v RAMJI SAMBAJI

[*I L R, 23 Bom, 683*

74 ————— *Hiba bil iwar*—
Settlement in lieu of dower—Possession not trans-
ferred—Validity on passing of consideration—A
Mahomedan executed a deed of settlement of
certain land in lieu of dower on his wife, who
left him shortly thereafter without ever acquir-
ing possession On his contending that the settle-
*ment was invalid—Held that a *hiba bil iwar* transac-*
tion by way of ‘Hiba bil iwar’ (as this was
found to be) is supported by proof of the actual
passing of the consideration agreed to be given; that
the consideration in this case was the release by the
wife of her right to dower from her husband and
that such release was completed by her acceptance

—continued.

Mortgage—First and second mortgages—Suit by first mortgagee for sale of mortgaged property—Second mortgagee not made a party—Res judicata.—Upon the death of G, a Mahomedan, his estate was divisible into eight shares, two of which devolved upon his son, A, one upon each of his five daughters, and one upon his widow, B. The name of B only was recorded in the revenue registers in respect of the zamindari property left by G. In 1876 A and B gave to X a deed of simple mortgage of 2½ biswas out of a 5 biswas share of a village included in the said property. In 1878 A and B gave to S a deed of simple mortgage of the 5 biswas, which were described in the deed as the widow's "own" property. In 1882 X obtained a decree upon his mortgage for the sale of the mortgaged property, and it was put up for sale and purchased by X himself in January 1884. In February and November 1884 the daughters of G obtained *ex-parte* decrees against A and B in suits brought by them to recover their shares by inheritance in the 5 biswas. In 1885 S brought a suit upon his mortgage of 1878, claiming the amount due thereon and the sale of the whole 5 biswas. To this suit he made defendants A and B, G's daughters, and X, alleging that the decrees of February and November 1884 were fraudulently and collusively obtained; and as to the auction sale of January 1884, that the 2½ biswas were sold subject to his mortgage, he not having been made a party to the suit brought by X upon the deed of 1876, and therefore not being bound by any of the proceedings taken therein or consequent thereto. It was contended that B's position as head of the family entitled her to deal with the property so as to bind all the members of the family, though using her name only; and it was suggested that, at the time of the mortgage of 1878, some of the daughters were minors. On behalf of the daughters it was contended (*inter alia*) that the decrees obtained by them against A and B in February 1884 were conclusive, by way of *res judicata*, against the plaintiff, widow, though held in respect by the members of the family derived from them. *Held per MAHMOOD, J.*—According to the Mahomedan law, the surviving widow, though held in respect by the members of the family, would not be entitled to deal with the property so as to bind them, and the entry of her name in the revenue registers in the place of her deceased husband would probably be a mere mark of respect and sympathy. Her position in respect of her husband's estate is ordinarily nothing more or less than that of any other heir, and even where her children are minors, she cannot exercise any power of disposition with reference to their property, because although she may, under certain limitations, act as guardian of their persons till they reach the age of discretion, she cannot exercise control or act as their guardian in respect of their property without special appointment by the ruling authority, in default of other relations who are entitled to such guardianship. Even, therefore, if some of the daughters in the present case were minors at the time of the plaintiff's mortgage, their shares could not be sold by the ruling authority, in equity, and good conscience, the sale being on the minors. *HASAN Ali v. MENDI HUSAIN*. I. L. R., 1 AIL, 538.

—continued.

The plaintiff contended that, according to Mahomedan law, it was not competent for the elder brother of a minor, as guardian, to alienate a minor's property. *Held* that the sanction of the ruling power constituted a sufficient authority for the act of the guardian, provided that the transaction was one which, according to Mahomedan law, a duly constituted guardian might permit a guardian to sell the immoveable property of his ward, when the late incumbent died in debt, or when the sale of such property is necessary for the maintenance of the minor. The evidence in the present case showed that the indebtedness of M and the distressed condition of his heirs existed in a sufficient degree to justify the sale of the whole property of the heirs. *HUSAIN BEGAM v. ZIA-UL-NISA BEGAM*. I. L. R., 6 Bom., 467.

Guardian of property—Mortgage—Co-heirs—Infant's liability.—In May 1881 certain co-heirs of a deceased Mahomedan mortgaged a portion of the property which had descended to them in common with others, then infants, as heirs of the deceased. The mortgage was raised for the purpose of paying off arrears of rent of a patti falkh which was a part of the property inherited from the deceased. There was no evidence to show that there were any other necessary expenses connected with the deceased's estate which had to be met, nor what that estate consisted of, nor whether the arrears of rent could or could not have been paid without having recourse to the mortgage. According to the Mahomedan law, the mortgagees were not the guardians of the property of the infants. *Held* that the shares taken by the infants as heirs of the deceased were not bound by the mortgage. *BHUTANATH Dey v. AHMED HOSAIN*. I. L. R., 11 Cal., 417.

Alienation by guardian to pay ancestral debts—Minor, Sale bind.—H, being in possession of certain real property on her account, and on account of her nephew and niece, minors, of whose persons and property she had assumed charge in the capacity of guardian, sold the property, in good faith and for valuable consideration, in order to liquidate ancestral debts and for other necessary purposes and wants of herself and the minors. *Held* that under Mahomedan law, and according to justice, equity, and good conscience, the sale was binding on the minors. *HASAN Ali v. MENDI HUSAIN*. I. L. R., 1 AIL, 538.

Alienation by widow—Rights of other heirs—Minor—Mother.

MAHOMEDAN LAW—GUARDIAN

—continued.

9. ————— *Custody of children*
Act IX of 1861, s. 5—Appeal.—The Mahomedan law takes a more liberal view of the mother's right with regard to the custody of her children than does the English law, under which the father's title to the custody of his children subsists from the moment of their birth, while under the Mahomedan law a mother's title to such custody remains till the children attain the age of seven years. An application was made by a Mahomedan father under s 1 of Act IX of 1861 that his two minor children, aged respectively twelve and nine years, should be taken out of the custody of their mother and handed over to his own custody. The application having been rejected by the District Judge, an appeal was preferred to the High Court as an appeal from an order. It was objected to the hearing of the appeal that, in view of s 5 of Act IX of 1861, the appeal was not maintainable as from a decree and

to the principles of the Mahomedan law, the applicant was by law entitled to have the children in his custody, subject always to the principle, which must govern a case of this kind, that there was no reason to apprehend that by being in such custody they would run the risk of bodily injury, and that (without saying that this exhausted the considerations that might arise, warranting the Court in refusing

10. ————— Guardianship of

MATTER OF THE PETITION OF MAHOMED AMIR KHAN LARDLI BEGUM v MAHOMED AMIR KHAN
 [I. L. R., 14 Cal., 615]

11. ————— *Minor—Guardian of property—Certificate of guardianship.*—Under the Mahomedan law, the brother of the mother of a female minor, whose parents are dead, is entitled, in preference to a mere stranger, to the guardianship of the property of the minor, unless it be shown that he is in some way unfit to take charge of such property. IN THE MATTER OF THE PETITION OF IMAM BUKSH IMAM BUKSH v. THACKO BIRRE
 [I. L. R., 8 Cal., 599]

12. ————— *Sister—Minor, Custody of—Prostitute—Held where the plaintiff*

MAHOMEDAN LAW—GUARDIAN

—continued.

sued for the custody of her minor sister, as her legal guardian under Mahomedan law, that the fact of the plaintiff being a prostitute was, although she was legally entitled to the custody of such minor, a sufficient reason for dismissing the suit in the interests of such minor. ABASI v DUNNE
 [I. L. R., 1 All., 598]

13. ————— Uncle—Nephew

14. ————— *Suit for restitution of minor wife in custody of her mother.*—The plaintiff sued to recover M. who was ten years of age, alleging that he had been married to her that she had remained at his house and that her mother

properly dismissed. WAZEER ALI v KAIM ALI
 [5 N. W., 108]

15. ————— *Sale by guardian of property of minor—Purchaser, Right of.*—Under the Mahomedan law, a sale by a guardian of property belonging to a minor is not permitted otherwise than in case of urgent necessity or clear advantage to the infant. A purchaser from such guardian cannot defend his title on the ground of the *bond fides* of the transaction. An elder brother is not in the position of a guardian having any power as such over the property of his minor sisters. BUKSH v. MALDAR KOOREE
 3 B. L. R., A. C., 423

S C BUKSH v DOOLBUN . 12 W. R., 337

16. ————— Brothers.—Under

DOOMER KHAN . 3 Agra, 21

17. ————— *Legal necessity—Sale.*—The question of legal necessity does not necessarily arise in cases of sale under the Mahomedan law and in fit of

18. ————— *Sale of minor's property—Validity of such sale—Sanction of sale*

MAHOMEDAN LAW—INHERITANCE

than the wife of quondam partners in the same mercantile house. *Ex re* *Three v. Asim Ali* [1 W. R., 162]

5. *Heirs of girl not validly married*—*Paternal grandmother—Mother—Half brothers or sisters*.—A marriage performed between father being dead and the marriage being contracted by her paternal grandmother, was held to be invalid on the death of the girl without afterwards meeting or communicating with her husband because after arriving at puberty she had never expressed in any way assent to or dissent from the marriage. *Held* that under such circumstances the paternal grandmother of the girl was not entitled to inherit her estate; that the mother as her surviving parent was entitled to a third share thereof; and that her half brothers and sisters were entitled without prejudice to any claim by third parties to the residue. *Mitra v. Laxmi Sanyal v. Mahomed Ismail Khan* [L. R., 1 A. Sup. Vol., 182 : 26 W. R., 26]

6. *Estate limited to take effect in favour of a person after another's death*.—It is not consistent with Mahomedan law to limit an estate to take effect after the determination, on the death of the owner, of a prior estate by way of what is known to English law as a vested remainder so as to create an interest which can pass to a third person before the determination of the prior estate. *Abdur Wahid Khan v. Mirza Bener* [L. R., 11 Cal., 597 : L. R., 12 I. A., 91]

7. *Primogeniture, Custom of*.—*Exclusion of females from inheritance*.—Observations on the law laid down by the Privy Council regarding the custom of primogeniture and the exclusion of females and other heirs from inheritance. *Mahomed Ismail Khan v. Mirza v. Khan* [L. R., 3 All. 723]

8. *Proof of custom*.—Where a suit was brought by two younger brothers, in accordance with Mahomedan law, for their shares in a property which was held by an elder brother and which had been held by a succession of elder brothers for a long course of years, two of the members having in former trials had their rights to exclusive inheritance upheld by formal decisions, *Held* by the High Court that, in the absence of any soundly established, the practice of succession by primogeniture must be accepted as prevailing on the estate. *Mahomed Akbar Beg v. Mahomed Korum Beg* [25 W. R., 189]

9. *Adopted son*.—An adopted son cannot inherit among Mahomedans. *Omar Khan v. Collector of Shahabad* [9 W. R., 502]

10. *Daughters of deceased brother—Brother—Sister*.—Under Mahomedan law, the daughters of a deceased brother of a person who demises cannot take any share of such person's property so long as a brother and sister, or only a brother, survives. *Azizunnissa v. Umar Khan* [10 W. R., 308]

11. *Daughter—Hindu embracing Mahomedan religion*.—*Held* that a Hindu family, having embraced the Mahomedan religion, is bound by the laws of that religion as regards succession, and that the appellant, the daughter, was entitled under that law to inherit from her father. *Soban v. Moop Khan* [2 Aggr., 61]

12. *Illegitimate sons—Succession to father's property*.—According to Mahomedan law, illegitimate sons can claim no relationship with their father's family. *Moondra v. Jan Khan* [13 W. R., 265]

13. *Illegitimate children—Co-naturality*.—*Asasab*.—The children of fornication or adultery (*wahid-uz-zina*) have no nasab or consanguinity; hence, the right of inheritance being founded on nasab, one illegitimate brother cannot succeed to the estate of another. *Shahbaz Ali Begum v. Mirza Bahadur* [4 B. L. R., A. C., 103 : 12 W. R., 512]

14. *Illegitimate child—Succession to property of illegitimate child—Conversion to Christianity*.—The State (and not the mother of an illegitimate Christian child) is entitled to succeed to the property of that child dying intestate after he has attained to man's estate, and having neither wife nor legitimate child. The Mahomedan law is not applicable to the illegitimate child of a Mahomedan woman brought up and dying a Christian. *Nazir alias Zuhroor v. Burgess* [1 W. R., 272]

15. *Residuary—Descendants in main line of paternal great-grandfather*.—By Mahomedan law, descendants in the male line of the paternal great-grandfather of an intestate are within the class of "residuary" heirs, and entitled to take, to the exclusion of the children of the intestate's sisters of the whole blood. *Moondra Ali Khan v. Mirza Bahadur* [1 Mad., 92]

16. *Step-sister v. A*.—Step-sister of a deceased proprietor is, according to Mahomedan law, one of his heirs, and in the category of his residuaries. *Azizunnissa v. Umar Khan* [2 Aggr., Pt. II, 162]

17. *Collateral time*.—Under the Mahomedan law, the succession of residuaries in their own right is as unlimited in the collateral as in the direct line, where it is expressly laid to be how low and how high soever. *Mahomed Hameed v. Mahomed Masood* [21 W. R., 371]

18. *Collateral time*.—Under the Mahomedan law, the succession of residuaries in their own right is as unlimited in the collateral as in the direct line, where it is expressly laid to be how low and how high soever. *Mahomed Hameed v. Mahomed Masood* [21 W. R., 371]

19. *Collateral time*.—Under the Mahomedan law, the succession of residuaries in their own right is as unlimited in the collateral as in the direct line, where it is expressly laid to be how low and how high soever. *Mahomed Hameed v. Mahomed Masood* [21 W. R., 371]

20. *Collateral time*.—Under the Mahomedan law, the succession of residuaries in their own right is as unlimited in the collateral as in the direct line, where it is expressly laid to be how low and how high soever. *Mahomed Hameed v. Mahomed Masood* [21 W. R., 371]

21. *Collateral time*.—Under the Mahomedan law, the succession of residuaries in their own right is as unlimited in the collateral as in the direct line, where it is expressly laid to be how low and how high soever. *Mahomed Hameed v. Mahomed Masood* [21 W. R., 371]

22. *Collateral time*.—Under the Mahomedan law, the succession of residuaries in their own right is as unlimited in the collateral as in the direct line, where it is expressly laid to be how low and how high soever. *Mahomed Hameed v. Mahomed Masood* [21 W. R., 371]

23. *Collateral time*.—Under the Mahomedan law, the succession of residuaries in their own right is as unlimited in the collateral as in the direct line, where it is expressly laid to be how low and how high soever. *Mahomed Hameed v. Mahomed Masood* [21 W. R., 371]

24. *Collateral time*.—Under the Mahomedan law, the succession of residuaries in their own right is as unlimited in the collateral as in the direct line, where it is expressly laid to be how low and how high soever. *Mahomed Hameed v. Mahomed Masood* [21 W. R., 371]

25. *Collateral time*.—Under the Mahomedan law, the succession of residuaries in their own right is as unlimited in the collateral as in the direct line, where it is expressly laid to be how low and how high soever. *Mahomed Hameed v. Mahomed Masood* [21 W. R., 371]

26. *Collateral time*.—Under the Mahomedan law, the succession of residuaries in their own right is as unlimited in the collateral as in the direct line, where it is expressly laid to be how low and how high soever. *Mahomed Hameed v. Mahomed Masood* [21 W. R., 371]

27. *Collateral time*.—Under the Mahomedan law, the succession of residuaries in their own right is as unlimited in the collateral as in the direct line, where it is expressly laid to be how low and how high soever. *Mahomed Hameed v. Mahomed Masood* [21 W. R., 371]

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—continued

affected thereby. They could only be so affected if circumstances existed which would furnish grounds for applying against them the rule of estoppel contained in s 115 of the Evidence Act or the doctrine of equity formulated in s 41 of the Transfer of Property Act but here no such circumstances existed. *SITARAM v AMIR BEGUM*

[I L R, 8 All, 324]

22 ————— *Power of guardians—Sale by guardian of property to which ward's title is in dispute and for the benefit of the latter*—By the Mahomedan law guardians are not at liberty to sell the immoveable property of their wards the title to which property is not disputed except under certain circumstances specified in Macnaghten's Principles of Mahomedan Law Ch VIII cl 14. But where disputes existing as to the title to revenue paying land of which part formed the ward's shares sold by their guardian were thereby ended and it was rendered practicable for the Collector to effect a settlement of a large part of the land a fair price moreover having been obtained the validity of the sale was maintained in favour of the purchaser as against the wards for though the sale was repeated that settlement

KAZI DUTT JHA : ABDEL ALI

[I L R, 18 Calc, 627
I L R, 18 I A, 96]

24 ————— *Uncle of minor—Liability of minor for act of person without authority purporting to act as the guardian of*

v. Dhoomra Khan 3 Agra, 21 *Biswina Dey v. Ahmed Hosain* I L R, 10 Calc, 417, *Anapurnabai v. Durgappa Mahalapa* I L R 20 Bom, 150, *Babu v. Shiroppa*, I L R 20 Bom, 199; *Bukshan v. Doolin* 12 W. R., 337 3 B

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—concluded

L. P. A C 423, and *Girraj Bahsh v. arnid Ali* I L R 9 All 340 referred to *NAZAM UD-DIN SHAH v. ANANDA PRASAD*
[I L R, 18 All, 373]

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See CONVERTS 1 Agra, F B, 39

[2 Agra, 81]

3 Agra, 82

I L R 10 Bom, 1

I L R, 20 Bom, 53

I L R, 21 Bom, 181

See LUNATIC I L R, 15 All, 29

See MAHOMEDAN LAW-CUSTODY

[I L R, 21 Calc, 149]

L R, 20 I A, 193

See MAHOMEDAN LAW-PRESUMPTION OF DEATH I L R, 2 All, 625

See SLAVERY I L R, 3 Bom, 422

L R, 6 I A, 137

13 Bom, 156

2 ————— Kindred related in, equal

KNATON 10 W R, 315

3 ————— *Heirs of missing person—Division of estate to be held by her son trust*—The plaintiff sued to be put in possession of a share of the estate of a missing person alleging that by Mahomedan law and custom they were entitled to hold in

KHAN v. JADRE 5 N W, 63

4 ————— *Heirs of husband on death of wife, whose heir he was* Whatever may be the position and rights of a husband being the only surviving heir of his wife according to the Mahomedan law there is no representation in matters of succession

of a marriage contract by death or otherwise, the parties or their heirs bear no more relation to one another

MAHOMEDAN LAW—INHERITANCE

—concluded.

from acts of parties—Widow.—In a suit in the nature of ejectment, by principal respondent as re-

siduary heir according to the Mahomedan law of a deceased person, to recover from his widow, the appurtenant, five-fourths of her deceased husband's estate, of the whole of which she had for upwards of eleven years been in possession, the plaintiff's title as residuary heir was put in issue, as well as other issues touching the widow's dower, etc. The Privy Council, thinking it of the utmost importance that those who had thus sanctioned a long possession should not be allowed lightly to disturb it, or to escape from those legitimate inferences and presumptions which on a conflict of evidence arose from their own acts and conduct, decided in favour of the widow, holding that the respondent had failed to establish the title upon which he sued. According to the Mahomedan law, there may be a renunciation of the right to inherit, and such a renunciation need not be expressed, but may be implied from the receding or abstaining from prosecuting a claim maintainable against another. *HERVEY OOR-KISSA* *HEGUA v. ATLAMDA KHAN* [17 W. R., P. C., 108]

of rights of inheritance—Relinquishment executed before ancestor's death.—A Mahomedan sued to recover his share of the property of his mother, deceased. It appeared that before her death he had by a registered deed in consideration of £150 renounced all his claims on her estate. Held that the renunciation was binding on the plaintiff. *KHANI* *MAJID v. KHANI MOJIB* [1 L. R., 19 Mad., 176]

MAHOMEDAN LAW—JOINT FAMILY. See LIMITATION ACT, 1877, ART. 127. [5 W. R., 238, 24 W. R., 1, 1 L. R., 12 Mad., 380, 1 L. R., 10 All., 109, 1 L. R., 14 Bom., 70, 1 L. R., 15 Mad., 67, 60, 1 L. R., 16 Bom., 181, 1 L. R., 13 All., 282, 1 L. R., 22 Cal., 954]

1. Inference of joint possession.—Where a Mahomedan lady with her daughters was found to be living with her brother, and to be supported by him from the proceeds of the paternal estate, it was held to be a proper and correct inference that the lady and her daughters were in possession along with the brother, who was the manager of the property. *ACHINA BIBER v. AGREDOONISSA BIBER* [11 W. R., 46]

2. Evidence of separation.—Separate registration of names.—The separate registration of the names of shares in the zamindari GURKHOOLAH KHAN v. KAVUT LATA MITTER [13 W. R., 124]

MAHOMEDAN LAW—INHERITANCE

35. *CO-HABITATION*—*Right of suit*.—In a suit for possession of a share in the property of a Mahomedan family—*Right of suit*.—In a suit

the Mahomedan law of inheritance, in which the plaintiffs and as sharers for the recovery of their share in certain property, one of the defendants pleaded that a partition, part of the property in dispute, was not subject to division, but this plea was overruled, and a decree was passed for the partition. The present suit was brought by a mortgagor from one of the defendants in the former suit (who had not appeared in that suit, and against whom therefore the decree had been *ex-parte*) to recover his share of the above-mentioned property, the subject-matter of his mortgage; the mortgagee was joined as defendant, among others, including the defendant who had raised the plea above stated. This plea was rejected by the same person. *JEED*, distinguishing *Prankurama v. Jabad Meeru*, 1 L. R., 13 Mad., 276, on the ground that the parties in the present case were governed by the Mahomedan law of inheritance, that the suit was maintainable. A co-sharer by Mahomedan law has a right to a specific share in each item of property left by the person from whom he inherits, and can sue to recover that share from any person in possession of the property. *CHANDU v. KAKHANAB* [1 L. R., 14 Mad., 324]

36. *Joint property*—*Suit for share of such property*—*Share allotted to defendant in same suit on payment of Court-fees*.—In the Presidency of Bombay a suit for partition of an inheritance by Mahomedans is hardly distinguishable from a partition suit by Hindus. In such a suit, if a defendant asks at the proper time to have his share divided off and allotted to him, such relief should be granted to him on payment of the necessary Court-fees. *AMRUT KADAR v. HATUNAH* [1 L. R., 23 Bom., 188]

37. *Shuni and Shini*—*Rules of descent*—*Evidence as to deceased having been a Shuni*.—A Mahomedan widow, who by birth was a Shuni, but whose deceased husband had been a Shiah, had during her married life conformed outwardly to his religion. The Shuni and Shiah rules of inheritance differing, her true heirs could only be ascertained by determining to which of these sects the deceased belonged at the time of her death. The evidence relating to the period after her husband's death led to the conclusion that throughout her widowhood she was a Shuni, having returned to the religion of her youth when freed from the necessities of her position as the wife of a Shiah. *HAYAT-UN-NISSA v. MUHAMMAD ALI KHAN* [1 L. R., 12 All., 290, 1 L. R., 17 I. A., 73]

38. *Renunciation of relinquishment*—*Right to inherit*—*Presumption of relinquishment*

MAHOMEDAN LAW—INHERITANCE

—continued.

19. ———— *Suit by legal sharer—Simultaneous suit by residuaries*—A suit by a Mahomedan widow (legal sharer) against her sons (residuaries) for her share of the property left by her husband. *111 D. O. M., 104*

20. ———— *Hereditary Officers Act Amendment Act (Bom Act V of 1886), s 2—Succession to a widow becoming the property of a widow and daughter—Construction of statute*—S 2 of Bombay Act V of 1886 is not

22. ———— *Distant kindred—"Return"*—Widow of the deceased—Heirs—Under the

23. ———— *Widow—Right to "return."*

24. ———— *Sister a residuary with daughters—Son of father's paternal uncle*—A Mahomedan lady died, leaving a husband, two daughters, a sister, and the son of her father's

25. ———— *Sister—Under the Mahomedan law, a sister is entitled to obtain a share of the estate left by her deceased brother.* BOOLINSHARER RIVER v BUKAOZLAN *17 W. R., 140*

26. ———— *Sister's son—Widow—Accord-*

MAHOMEDAN LAW—INHERITANCE

—continued.

27. ———— *Childless widow—Shiah law.*—According to the law of the Shiah sect, a childless widow is not entitled to share in the immovable property left by her husband, but only in the value of the materials of the houses and buildings upon the land. TOONANJAN v. MEHDEE BEGUM *[3 Agra, 13]*

28. ———— *Immovable property*—Under the Mahomedan law, which governs

29. ———— *Inheritance by childless widows, Shiah sect*—The childless widow of a Mahomedan of the Shiah school is not entitled to any share in the land left by her husband. ALI HUSSAIN v. SAJUDA BEGUM *[I. L. R., 21 Mad., 27]*

30. ———— *Land—Buildings.*—Held, following *Toonanjani v. Meinteeg Begum, 3 Agra, 13*, that the childless widow of a Shiah Mahomedan, though she takes nothing out of her deceased husband's land, inherits a share of the buildings left by him. UMARABAZ ALI KHAN v. WILAKAT ALI KHAN. *I L. R., 19 All., 189*

See AGA MAHOMED JAFFER BINDANIM v. KOOL-SOM BISEE KOOL-SOM BISEE v. AGA MAHOMED JAFFER BINDANIM *I L. R., 25 Calc., 9*
[I. R., 34 I. A., 198]
1 C. W. N., 449

31. ———— *Widow and daughters.*—According to Mahomedan law, a widow and two daughters are entitled between them to nineteen twenty-fourths of the property of their deceased husband and father in the proportion of one-eighth and two-thirds. MAHOMED RICHWAN KHAN v. KHAN-SAN BUKSH *5 W. R., 221*

32. ———— *Khoja Mahomedans, Custom of—Succession to property of widow dying intestate*—By the custom of the Khoja Mahomedans, when a widow dies intestate and without issue, property acquired by her from her deceased husband does not descend to her own blood relations, but to

KHATAY v. PARDHAN MANJI *[2 Bom., 293; 2nd Ed., 276]*

S C KHAYATUN v. AMANER *11 W. R., 212*

34. ———— *Daughter.*—*Semle*—According to the Mahomedan law, want of chastity in a daughter, before or after the death

MAHOMEDAN LAW-KAZI-continued.

The repeal of that Regulation by Act XI of 1864 left the Mahomedan law as it stood before the passing of that Regulation; and that law sanctioned no grant of such an office to a man and his heirs. The appointment of kazi lies exclusively with the sovereign, or other chief executive officer of the State, and ought to be made with the greatest circumspection with regard to the fitness of the individual appointed; and though the sovereign may have full power to make the watan attached to the office of kazi hereditary, yet he has, under the Mahomedan law, no power to make the office itself so. JAMAT WATAD AHMAD & JAMAT WATAD JALAL I. L. R., 1 Bom., 633

2. Bom. Reg. XXVI of 1827—Act XI of 1864.—Where a stipend granted

by the Emperor Aurangzib in A.D. 1693 did not pur-

XXXXVI of 1827, relating to the appointment of kais
office was or could be made hereditary. Regnlation
kais by native governments did not prove that the
tions or appointments of members of his family as
of the plaintiff. — *H 1212* that the subsequent recog-
nition of the office of kais, depending on an answer

was repealed by Act XI of 1864, whereby it is rectified that it is inexpedient that the appointment of kazis should be made by Government. The continuance therefore by the Collector of an allowance to the plaintiff in 1867 could not be regarded as a constructive appointment of him to be kazi. DAVSUDA v. ISMAHIA I. R. 3 B. 73

3. Hereditary office—Custom—Hereditary Offices Act (Bom. Act III

of 1874), s. 9.—The office of kazi is not an hereditary office, unless perhaps by special custom of the locality. Where such a custom is not established, property attached to the office is not taken properly.

and the Collector has no power to make an order with respect to it under s. 9 of the Hereditary Offices Act (Bombay Act III of 1874). *Jamaal v. J. B. & Co.*

Amner v. Damsal vada vada, 1. L. R. 1 Bom., 633, and Damsal v. Ismailsha, 1. L. R. 3 Bom., 72, followed. BABA KARATI SHEET SHINAI v. NASSARUDDIN VALAD AHMADUDDIN KAZI

[I. L. R., 18 Bom., 103
See DHARAMDAS SAMBHDAS v. HARAJI
[I. L. R., 19 Bom., 250]

4. Power to appoint kazi of Bombay—Disturbance of office—Right of suit—Fees received by kazi.—Semble—The power to appoint a person to the office of kazi of Bombay

is vested in the Governor of Bombay, and not in the Governor in Council. According to Mohammedan law, the appointment of kazi has always been vested in the chief executive officer of the State, and the right

to make such appointment has never rested with the Mohammedan community at large. When it was shown that the plaintiff had acted as kazi of Bombay

action brought against him for disturbing the plaintiff in his office of kazi, was unable to show that the plaintiff had been illegally appointed, it was held that

MAHOMEDAN LAW—JOINT FAMILY

—continued

3 ————— *Onus probandi*
—Registration of land in one name —In a dispute

possessor was more consistent with equity and common sense than a hard and fast rule requiring the party who claims a joint interest to prove that the registered proprietor has duly accounted to him for his proportionate share of the profits. Registration of landed property in the name of one member of a family is not conclusive against the claim of those who might contend that they had nevertheless continued to retain a joint interest in the property.

HYDER HOSSEIN v. MAHOMED HOSSEIN

(17 W. R., 185. 14 Moore's I. A., 401)

4 ————— Acquisition by managing member—*Presumption*—Additions made to the

MIRA MOIDIN RAYUTTAN VELLAI MIRA RAYUTTAN
v. VARISAI MIRA RAYUTTAN . 2 Mad., 414

5 ————— Acquisition by the members severally—*Joint acquisition—Presumption*—
When the members of a Mahomedan family live in

6 ————— Purchase by father in son's name—*Onus probandi*—*Sembla*—Among Maho-

the onus is not on the son to prove that the purchase was not made really for and by the father but by the son for himself and with his own funds.

GOLAN MACKDOON v. HAFEEZOOVASSA

(7 W. R., 489)

7 ————— Joint or separate acquisition—*Onus probandi*—*Presumption* as to joint possession—In a suit by a member of a Mahomedan family to recover possession of a share in landed property alleged to be ancestral where defendant

MAHOMEDAN LAW—JOINT FAMILY

—concluded

claimed the same as his separately acquired property—*Held* that it was not necessary for defendant to show that he had funds sufficient to enable him to obtain the property and that the burden of proving that the property was acquired for and enjoyed by the whole family jointly was upon the plaintiff.

MAHOMED AFAK v. KHEAN

ALI 14 W. R., 374

8 ————— *Onus probandi—Hindu customs amongst Mahomedans—Presumption when no allegation of custom made*—A and B were two brothers Mahomedans, who lived together in community. A whilst so living with his brother, purchased certain lands under a conveyance executed by the vendor and A. In a suit by the heirs of B against the heirs of A to obtain possession of such lands in which they alleged they had been found the

plaintiffs found the onus of proof by A alone was put upon A. *Held* that there being no allegation that the parties had adopted the Hindu law of property the Judge by applying to Mahomedans the presumption of Hindu law, had cast the onus on the wrong party.

ABDOOL MAHOMED MAKHEM

(L. R., 10 Cal., 562)

9 ————— Liability of family for necessities—*Marriage expenses*—A and B who were Mahomedans living joint in food and estate separated in Kartick 1279 and at the time of the separation was relating ground that me we were in I and to what is

just it is his share. At the time of the separation one of us shall pay the share of the other then the person who has paid shall recover from the other the amount he has paid for the other." After the separation a decree was obtained against A for the price of certain clothes supplied to him for his marriage, which took place while A and B were joint and A having paid the amount of this decree and B for one half of the amount so paid. *Held* that the debt was not incurred in a matter necessary to the existence of the family but for the individual benefit of A and that as in a Mahomedan family the individual benefited, and not the family, is liable for expenses incurred for the benefit of any particular member. A alone was liable for the debt. *Held* also that the agreement had reference only to such claims as the family were jointly liable for.

ALINUTTESA KHATUN v. HASSAN ALI

8 C. L. R., 378

MAHOMEDAN LAW—KAZI.

1. ————— Appointment of Kazi—*Here duty office—Bomb. Reg. XXI of 1927—Act XI of 1964*—The enactment of Bombay Regulation XXI of 1927 was adverse to any supposition that

case the presumption may be rebutted. *NAWAB-KHANS v. FUZUL-ODDIN-KHAN*. *KAWAB v. FUZUL-ODDIN-KHAN*. *March, 428*

S. C. FUZUL-ODDIN-KHAN v. NAWAB-KHANS [2] *May, 479*

14. According to Mahomedan law, cohabitation as husband and wife will raise a presumption of a marriage if the parties are Mahomedans, or persons between whom a valid marriage can be celebrated. *MOHAMMED KHAN v. ABDULLAH KHAN*. [3] *N. W., 177*

15. *Legitimacy*.—The mere residence of a woman in the house of a Mahomedan as a menial servant, and the circumstance that she had a son, do not raise the presumption of marriage or legitimacy of the son. Cohabitation means something more than mere residence in the same house. It should be shown that cohabitation continued, that children were born, and that the woman was treated as a wife, and lived as such, and not as a servant. *KUTUB-ODDIN-KHAN v. ATTA-ODDIN-KHAN*. [2] *Agre, 211*

16. *Legitimacy*.—If a child has been born to a father of a mother where there has been not a more casual concubinage, but a more permanent connection, and where there is no insurmountable obstacle to a marriage, according to the Mahomedan law, the presumption is in favour of such marriage having taken place, and the mother and child are entitled to inheritance. *SHUMS-ODDIN-KHAN v. RAI JAN KHAN*. [6] *W. R., P. C., 52*

17. *Legitimacy*.—Though there is no evidence of the celebration of any marriage ceremony, still the fact of a woman having constantly lived as a married woman with her husband, and the fact of her children having lived as legitimate children with their parents, make the case fall within the rule as to the presumption of marriage and legitimacy. *Hossain Khan v. Shrifoonissa Begum*, [8] *Moore's I. A., 156*, and by the High Court in *Nawab-Khans v. Fuzul-oddin-Khan*, *March, 428*. *ASHRAF-ODDIN-KHAN v. AZER-ODDIN-KHAN*. [1] *W. R., 17*

18. *Acknowledgment of wife*.—The acknowledgment of a wife which the Mahomedan law requires as proof of marriage should be specific and definite. The mere fact of a man keeping a woman within the purdah and treating her to outward semblance as a wife, does not necessarily, in the absence of express declaration and acknowledgment, constitute the factum of marriage. *KADAR-NATH CHUCKERBARTY v. DONZELLE* [20] *W. R., 352*

19. In a suit by A for possession of property which belonged to her uncle B, the defendants C and D each alleged herself to be the wife of B, and each said that the

8. *Consent of mother*.—Where the nearest guardian of a minor was precluded from giving his consent to the marriage of the minor, the marriage contracted by consent of the mother of the minor was held to be valid by Mahomedan law. *KATOO v. GURDITAH*. [13] *B. L. R., 163 note: 10 W. R., 12*

9. *Marriage with living wife's sister*.—*Legitimacy of children of such marriage*.—*Acknowledgment*. *Effect of, on illegitimate children*.—Under the Mahomedan law, marriage with the sister of a wife who is legally married is void. The children of such marriage are illegitimate and cannot inherit. *Shreefoomisa v. Khizroonissa Khanum*, [3] *S. D. A. Sel. Rep., 210*, referred to. The doctrine of acknowledgment is not applicable to a case in which the paternity of the child is known, and it cannot therefore be called in to legitimate a child which is illegitimate by reason of the unlawfulness of the marriage of its parents. *Muhammed Alladad Khan v. Muhammad Ismail Khan*, [1] *L. R., 10 All., 289*, followed. *AIZUD-DIN-KHAN v. KHATOON v. KARIMUNNISSA KHATOON*

10. *Shahs—Marriage between a Mahomedan and a Christian*.—A Mahomedan woman of the Shah sect cannot contract a valid marriage according to Mahomedan rites with a Christian. *Bakhsai Kishen Prasad v. Thakur Das*. [1] *L. R., 19 All., 375*

11. *Mulla form of marriage*.—*Repudiation*.—*Divorce*.—The mulla form of marriage does not admit of repudiation under the law of the Shah sect of Mahomedans. *Quere*—Whether the form of divorce called zihar may be exercised in the mulla form of marriage. In the matter of the petition of *Ludbur Sahiba*. *Ludbur Sahiba v. Kavar Kudar*. [1] *L. R., 8 Cal., 736: 11 C. L. R., 237*

12. *Presumption of marriage*.—*Cohabitation*.—*Presumption of legitimacy of offspring*.—By the Mahomedan law continual cohabitation and acknowledgment of parentage is presumptive evidence of marriage and legitimacy. *HIDAYAT-ODDIN v. RAI JAN KHANUM*

[3] *Moore's I. A., 295*

S. C. SHUMS-ODDIN-KHAN v. RAI JAN KHANUM. [6] *W. R., P. C., 52*

13. *Acknowledgment of wife and of legitimacy of children*.—According to Mahomedan law, continued open cohabitation, accompanied by a declaration that the woman is the man's wife, and that the children, the issue of the cohabitation, are his children, or by conduct showing that he considers them to be so, is sufficient evidence from which to infer marriage. Even where the cohabitation has been casual only, and there has been no acknowledgment of the woman as his wife, or the issue as his children, the fact of such cohabitation raises a presumption of marriage, and that the children are legitimate, but in such a

MAHOMEDAN LAW—MAINTENANCE

—concluded

wife YUSOOF ALI CHOWDHRY v PRZOOVISA KHATOON CHOWDHAN . . . 15 W. R., 296

5 ———— *Mutta* wife—*Mutta* form of marriage—*Criminal Procedure Code (Act X of 1972), s 536—Shiah sect*—Under the law of the Shiah sect of Mahomedans a *mutta* wife is not entitled to maintenance, but such a provision of the law does not interfere with the statutory right to maintenance given by s 536 of the Code of Criminal Procedure IN THE MATTER OF THE PETITION OF LUDDUN SAHIBA LUDDUN SAHIBA v KAMAR KUDAR . I L R., 8 Calc., 736. 11 C. L. R., 237

MAHOMEDAN LAW—MARRIAGE

See BIGAMY . I L R., 18 Calc., 284
[I L R., 19 Calc., 79]

See CASES UNDER MAHOMEDAN LAW—ACKNOWLEDGMENT

See MAHOMEDAN LAW—DOWER

[I L R., 8 All., 149
I L R., 1 All., 483, 508
I L R., 4 All., 205
I L R., 2 All., 831
I L R., 23 Mad., 371]

See MARRIAGE I L R., 25 Calc., 537

1 ———— *Validity of marriage—Pegu-rites for valid marriage*—Under the Shiah as well as the Sunnialaw, any connection between the sexes which is not sanctioned by some relation founded upon contract or upon slavery is denounced as “*zina*” or fornication Both schools prohibit sexual intercourse between a Moosulash i.e. a Mahomedan woman and a man who is not of her religion According to the Shiah law, marriage must in all cases be lawful except when there is error on the part of both or either of the parents HIMMUT BAHADOOR v SHAHEZADI BEGUM 14 W. R., 125

Affirming on review S C SHAHEZADI BEGUM v HIMMUT BAHADOOR

[12 W R., 512. 4 B L R., A. C., 103]

2 ———— *Valid marriage,*

SOBRATI v JUNGHI 10 W R., 120

3 ———— *Nikah marriage*—The *nikah* form of marriage is well known and established among Mahomedans The issue of such a marriage is legitimate by Mahomedan law MOTTERHOODZEN v RAMDHEN RAJFERUR

[18 W. R., Cr., 23]

4. ———— *Woman's right to choose husband—Guardian—Marriage without*

MAHOMEDAN LAW—MARRIAGE

—continued

consent of father—According to the doctrine of the Mussulman teacher, Abu Hanifa a Mussulman female, after arriving at the age of puberty without having been married by her father or guardian, becomes “*free*” and can wish the d after out t

ISRAHIM v GULAM AHMED 1 Bom., 238

5 ———— *Marriage of minor*
—*Assent of wife after puberty*—A ceremony of

KURREK KHAN
[I R., I A, Sup Vol., 192 26 W R., 26]

6 ———— *Consent of parents—Inequality of parties*—Held that under Mahomedan law the bride's father can set aside the

7 ———— *Infant—Consent*
—*Apostate father*—The consent of the father was held not necessary to the marriage of a Mahomedan infant girl he being an apostate from the Mahomedan faith, this being so the consent of the mother was sufficient IN THE MATTER OF MAHIB BIRI

[13 B. L. R., 160]

MAHOMEDAN LAW—MOSQUE

MAHOMEDAN LAW—PRE-EMPTION

—continued.

2. PRE-EMPTION AS TO PORTION OF PRO-
PERTY

3. COUNTERPARTS 6707
4. MISCELLANEOUS CASES 6718

See CASES UNDER PRE-EMPTION.

1. RIGHT OF PRE-EMPTION.

(a) GENERALITY.

1. ORIGIN OF RIGHT—Law or cus-

tom.—*Cessation of right.*—The right of pre-emption arises from a rule of law by which the owner of the land is bound; and it exists no longer if there ceases to be an owner who is bound by the law either as a Mahomedan or by custom. *BYKATY PERSAD v. KORTIKOR SINGH* 24 W. R., 95

2. REQUISITES FOR RIGHT—*Extin-*

guishment of vendor's right—Incomplete sale—Right of pre-emption.—In a suit claiming a right to pre-emption, where it was found as a fact that the sale had not been completed, and that there had not been cessation of the vendor's right, it was held that, whether under the ordinary principles which relate to contracts of sale, or under the principles of Mahomedan law, no right could arise in favour of the pre-emptor. The privilege of *shufa* refers to cases in which the sale has been actually completed by the extinction of the rights of the vendor. *LAUD v. DUTTO KAY* 8 W. R., 255

3. EXTINGUISHMENT OF

vendor's right.—Under Mahomedan law, the right of pre-emption does not arise until the seller's right of property has been completely extinguished. *BOOK-DOO KOON v. LATTA RENGHOOR DIXA* 10 W. R., 246

4. SALES—Leases in

perpetuity.—Under the Mahomedan law, the right of pre-emption applies to sales only, and cannot be enforced with reference to leases in perpetuity like a *mokumt*, which (however small the reserved rent) are not sales and in which there is no "milk-yut" or ownership on the part of the *shufa* or pre-emptor. *KAM GOJAM SINGH v. NURSING SANOOR* 125 W. R., 43

5. PERPETUAL LEASE—

Sale.—Where a co-proprietor does not part with his entire interest in land by an absolute sale, but merely grants a lease of it, even though it be a *moumt* lease, the doctrine of pre-emption will not apply. *MOOROOJY KAM v. HAREE KAM*, 8 W. R., 106, and *KAM GOJAM SINGH v. NURSING SANOOR*, 125 W. R., 43, followed. *I. L. R., 15 Cal., 184*

6. BOND FIDE SALE—

There is no right of pre-emption where there has not been a real *bond fide* sale according to the Mahomedan law. *MONNO BIBEE v. JUGHANATH CHOW-DRY* 2 W. R., 78

MAHOMEDAN LAW—MOSQUE

MAHOMEDAN LAW—PRE-EMPTION.

—concluded.

Bench. Queen-Empress v. Nazam, I. L. R., 2 All., 461, referred to. Per Manmooh, J.—Acce-

ding to the Mahomedan ecclesiastical law, the word "amin" must be said and should be pronounced at the end of the prayer ending with *Sham-I-Istaha*; but there is no authority for holding that it should be pronounced in a loud or in a low tone of voice; and (provided no disturbance of the public peace is caused) a Mahomedan pronouncing the word loudly, in the house, except of conscience, commits no offence or civil wrong. *ATTA-UL-HA v. AZIM-UL-HA*

3. PUBLIC MOSQUE—*Right of*

Mahomedans without distinction of sect to use such mosque for the purpose of worship—Right to say "amin" loudly during worship.—Where a mosque is a public mosque open to the use of all Mahomedans without distinction of sect, a Mahomedan who, in the *bont fide* exercise of his religious duties in such mosque, pronounces the word "amin" in a loud tone of voice, according to the tenor of his sect, does nothing which is contrary to the Mahomedan ecclesiastical law or which is either an offence or civil wrong, though he may by such conduct cause annoyance to his fellow-worshippers in the mosque. But any person, Mahomedan or otherwise, who goes into a mosque not *bont fide* for religious purposes, but *maia fide* to create a disturbance there and interfere with the devotion of the ordinary frequenters of the mosque, will render himself criminally liable. *JANGU v. AHMAD-UL-HA*

4. DEDICATION OF MOSQUE TO

public worship.—*Right to worship in mosque.*—A mosque becomes consecrated for public worship either by delivering to a *mawla* or on the declaration of the *walid* that he has constituted it into a mosque, or on the performance of prayers therein. The prayers of one individual alone are sufficient to constitute a public mosque so long as it is accompanied by the *azan* (call to prayer). Any Mahomedan, to whatever sect he may belong, is entitled to offer his prayers according to his own ritual in any mosque so long as he does not willfully disturb or annoy the other members of the congregation. Non-conformity on matters of ritual does not affect his right to do so. *Fazl Karam v. Mirza Darya, I. L. R., 18 Cal., 448, 449; Alauddin v. Azamullah, I. L. R., 12 All., 494; and Queen-Empress v. Nazam, I. L. R., 2 All., 461, referred to.*

1. RIGHT OF PRE-EMPTION.

Col. 5688

(a) GENERALITY 5688

(b) CO-SHARERS 5696

(c) PRE-EMPTION IN TOWNS 5703

(d) MORTGAGES 5703

(e) WATER OF RIGHT OR REVERSAL TO PURCHASE 5704

MAHOMEDAN LAW—MARRIAGE*—concluded*

other was his concubine *C* also set up a will in her favour by *B* *C* admitted that she had been once *B*'s concubine, but alleged that she had been subsequently married to *B* The evidence was conflict

20. ————— Celebration of**21. ————— Acknowledgment**

establish their claims as such to a share in the estate on his decease Where a lady has cohabited with a Mahomedan for years and has had a child by him who has been openly acknowledged and treated by him as his lawful son although there may be no evidence of the actual fact of marriage, the Court is justified in presuming a marriage **MAHATALLA BIBI v. AHMED HALEEMOOZOMAN CURBERMOY NISSA BEGUM v. AHMED HALEEMOOZOMAN**

[10 C L R., 293]**22. ————— Pre marriage, Pres-**

re marriage **AKHTAROOVATISA v. SHARUTULLAH CHOWDHRY** **7 W. R., 238**

MAHOMEDAN LAW—MORTGAGE,

— Mortgage by widow—Power to mortgage shares of minors—Mahomedan law of

MAHOMEDAN LAW—MORTGAGE*—concluded.*

shares in the house might be ascertained and declared; that the house should be sold and their shares in the proceeds handed over to them The defendant pleaded that the plaintiffs' mother and adult brother *E* had mortgaged the house to him in 1891 as a security for a loan of Rs 500 which they wanted to pay off debts incurred in rebuilding the house and to defray the marriage expenses of *L* He contended that the

or else it must be for the benefit of the minor The money raised by the mortgage in question was not raised for any purpose specially authorized by Mahomedan law and the purpose for which it was raised was not for the benefit of the minor Consequently, the widow had no authority to mortgage their shares **HURBAT v. HIRAJI BYRAMJI SHANJA**

[1 L R., 20 Bom., 118]**MAHOMEDAN LAW—MOSQUE**

1. ——— Constitution of masjid.—Two essential conditions to the constitution of a masjid are requisite first that the site must be publicly appropriated to the purpose of a masjid; secondly, that public prayer should be performed in it *Held*, in a suit to establish a right to repair and endow a

2. ——— Endowment or dedication of mosque—*Muhammadi* or *Hanafi* sect—*Disturbing a religious assembly—Right to say 'amin' loudly during worship*—According to the Mahomedan law, a mosque cannot be dedicated or appropriated exclusively to any particular school or sect of Sunni Mahomedans It is a place where all Mabo

MAHOMEDAN LAW—PRE-EMPTION

1. RIGHT OF PRE-EMPTION—continued.

17. *Reputation of sale by seller or buyer.*—As, according to Mahomedan law, when either the seller or buyer repudiates any right of pre-emption in such a case. *OSMANOGLU v. MUSTAFA* 1864, 210.

18. *Exclusion of pre-emption.*—*Held* that the right of pre-emption, when once allowed and exercised by the pre-emptor, cannot be disputed at subsequent occasions of sale, and that neither mahomedan, public, or respectability of character, are considered of pre-emption under the Mahomedan law. *PERVA v. DARGAH NATH* 1864, 236.

19. *Evidence of right.*—*Not* is independent of the pre-emptor. *RAJ KANTLAWAR HAT v. SHIVA DAS* 2 Agre, 70.

20. *Decision on evidence.*—Where evidence is gone into, the Court must decide according to the view it takes of the evidence, any preference which may be given to the evidence for the person claiming the right of pre-emption being given only in the event of the evidence being very evenly balanced. *HUSNA SINGH v. RASHI BENSHEE SINGH* 7 W. R., 211.

21. *Nature of pre-emption.*—*Ground for allowing right.*—The right of pre-emption is not matter of title to property, but is rather a right to the benefit of a contract; and when a claim is advanced on such a right, it must be shown that defendant is bound to concede the claim either by law or by some custom to which the class of which he is a member is subject on ground of justice, equity, and good conscience. *MONSIEUR LATI v. CHRISTIAN* 8 W. R., 448.

22. *Nature of right.*—The right of pre-emption is not one which attaches to property, and the obligation it implies may be limited to the residents of a district or to a family, or to any particular class of persons, it being for the claimant in each case to show that it attaches to the defendant. *AKHOZ RASHI SHANAZAR v. RASHI KANT ROY* 15 W. R., 223.

23. *Applicability of right.*—*Nature and extension of right.*—The right to pre-emption is very special in its character, and is founded on the supposed necessities of a Mahomedan family arising out of their minute subdivision of ancestral property; and as the result of its exercise is generally adverse to public interest, it will not be recognized by the High Court beyond the limits

MAHOMEDAN LAW—PRE-EMPTION—continued.

24. *Proof of existence of custom of pre-emption.*—*Held* that a solitary case or two is not sufficient to prove the custom of pre-emption in a locality where the privilege is not binding upon the parties by positive law. *BEKARABE DOOS v. IMHOOT CHIRP* 1 Agre, 243.

25. *Decisions as to prevalence of custom.*—In *Under Narayan Choudhary v. Mahomed Azizoddien*, 1 W. R., 234, the Court only meant to say that it could not be held upon decisions that were in conflict with other decisions of the same district that the custom of pre-emption prevailed there; it did not say that when there were decisions tending the same way, that that would not be satisfactory proof of the fact. *KODURUOTIATH v. MONTEEN SHANA* 9 W. R., 537.

26. *Pre-emption claimed on ground of village rights and Sun-Ni.*—*Tendons and vendee Sunnis, pre-emptor a Shiah.*—*Held* that a Mahomedan of the Shiah sect could not maintain a claim for pre-emption based on the ground of village rights and the vendee were Sunnis. *Gobind Dugal v. Inayat-ullah, I. L. R., 7 All., 775*, and *Pir Makash v. Sughra Bibi, Weekly Notes, All., 1892*, 31, referred to. *QURBAN HESAN v. GHORE* [I. L. R., 22 All., 102].

27. *Hindus—Local custom.*—*Sale to a stranger.*—The right of pre-emption, when it exists among Hindus, is a matter of contract or custom agreed to by the members of a village or community. Such a custom is not properly described as attached to the land, and as soon as any members of a Hindu community, who have agreed to be governed by it, sell to any one who is a stranger to the agreement, the land is no longer subject to pre-emption. *HINA v. KALIT* [I. L. R., 7 All., 916].

28. *Hindus—Usage and custom.*—Unless a prescriptive usage and local custom be clearly established, a Hindu defendant is not bound by the Mahomedan law in a case in which a Mahomedan seeks to enforce his right of pre-emption. *SHENAI ALI CHOWDHRY v. RASHTAN BIBE* 8 W. R., 204; 2 Ind. Jur., N. S., 249.

29. *Hindu purchase.*—A claim for pre-emption under the Mahomedan law cannot be maintained against a Hindu purchaser. *MORI CHAND v. MAHOMED HOSSEIN KHAN* 7 N. W., 147.

30. *CHANDO v. ALIMOODDIN* 6 N. W., 28 [S. C. Agre, 1874, 305].

MAHOMEDAN LAW—PRE-EMPTION

—continued

1 RIGHT OF PRE-EMPTION—continued

7 ————— Sale—Transfer in

8 ————— Gift of land without consideration—Shankalp—No right of pre-emption arises where land is assigned without consideration as shankalp. *HAR NARAIN PANDU v RAM PRASAD MISHR* I L R, 14 All, 333

Koonwar v Zahoor Ali

I Agra, 258

10 ————— Heir of pre-emptor

Non survival of right—According to the Mahomedan law applicable to the Sunni sect if a plaintiff in a suit for pre-emption has not obtained his decree for pre-emption in his lifetime the right to sue does not survive to his heirs. *MUHAMMAD HUSAIN v NIAMAT UN NISSA* I L R, 20 All, 88

11 ————— Claim for pre-emption based upon a transaction which was a good sale under the Mahomedan law but not under the Transfer of Property Act (IV of 1882), s 54—Bengal, N W P and Assam Civil Courts Act (XII of 1887), s 37—Where a Sunni Mahomedan transferred certain immovable property exceeding in value Rs 100 under such circumstances that the price was paid and possession of the property delivered

BANERJI J contra—In the absence of fraud, no claim for pre-emption under the Mahomedan law applicable to persons of the Hanifa sect can arise in respect of the sale of immovable property of the value of one hundred rupees and upwards unless such sale has been effected according to the provision of s 54 of Act IV of 1882. *BEGAM v MUHAMMAD LAQUB* I L R, 16 All, 344

12 ————— Rights of third persons having a claim to pre-emption where the vendee is also a person who would have a similar claim were the sale to a stranger—Under the

MAHOMEDAN LAW—PRE-EMPTION

—continued

1 RIGHT OF PRE-EMPTION—continued

12 —————

11 ————— *ulah* I L R 7 All 770 referred to. A person entitled to a right of pre-emption is not bound to claim pre-emption in respect of all the sales which may be executed in regard to the property although every suit for pre-emption must include the whole of the property subject to pre-emption conveyed by one transfer. *Kahsi Nath v Mukhta Prasad* I L E, 6 All, 370, referred to. *AMIR HASAN v RAHIM RAJISH* I L R, 19 All, 488

13 ————— Invalid sale—

pur baser
two araces
tive right
t of sale
Begam v Muhammad laqub I L R 16 All 344,
referred to. *NAJM UN NISSA v AJAIS ALI KHAN*
(I L R, 22 All, 343)

14 ————— Exercise of right—Re sale—Claim after waiver upon uncompleted sale—The right of pre-emption according to the Mahomedan

15 ————— Properly sold in execution of decree—Right of judgment debtor—The right of pre-emption cannot be exercised by a judgment creditor in respect of the sale of property in execution of his decree. *NOZMOOZEEN v KAVYE JHA* Marsh., 555 2 Hay, 651

16 ————— Sale by public auction—Opportunity to bid—When property is sold by public auction at a sale in execution of a decree and the neighbor or partner has the same opportunity to bid for the property as other parties present in Court the law of pre-emption does not apply. *ABDUL JAZZAR v KHELAT CHANDRA SHUKLA* [I B L R, A. C, 105, 10 W. R., 185]

MAHOMEDAN LAW—PRE-EMPTION

—continued

1 RIGHT OF PRE-EMPTION—continued

30

Hindu purchaser—Mahomedan vendor and co-sharer—Per PEACOCK, C J, and KEMP and WITTER, JJ—A Hindu purchaser is not bound by the Mahomedan law of pre-emption in favour of a Mahomedan co-partner although he purchased from one of several Mahomedan co-partners, nor is he bound by the Maho-

KUMAR ROY v JAN MAHOMED FAHMAN KHAN v BHARAT CHANDRA SHAHA CHOWDHRY

[4 B L R, F B, 134 13 W R, F B, 21

31 ———— *Hindu vendor—*

Purno Singh v Hurry Churn Surmah, 10 B L R, 117, followed DWARKA DOSH v HUSAIN BAKSH [1 L R, 1 All, 564

32

Hindu purchaser—Mahomedan vendor and pre-emptor—Act VI of 1871 (Bengal Civil Courts Act), s 21—"Religious usage or institution"—"Parties"—Held by the

to administer the Mahomedan law in cases for pre-emption, but that on grounds of equity, that law had always been administered in respect of such claims as between Mahomedans and it would not be equitable that persons who were not Mahomedans but who had dealt with Mahomedans in respect of property, knowing the conditions and obligations under which the property was held should merely by reason that they were not themselves subject to

COURTS ALSO v. MAHOMEDAN, J., that the word "parties," as used in s 24 of the Bengal Civil

MAHOMEDAN LAW—PRE-EMPTION

—continued

1 RIGHT OF PRE-EMPTION—continued

Courts Act, does not mean the parties to an action,

Khan, 7 N. W 147 and Dwarka Das v Husain Baksh 1 L R, 1 All, 564 referred to GONDAL DAYAL v INAYATULLAH BHAHMOMAL v ABUL HASAN KHAN 1 L R, 7 All, 775

33

Hindus—Custom prevailing among Hindu—Obligation to fulfil

34

Hindu vendor and purchaser—Mahomedan pre-emptor—"Talaat-i-istihad"—Invocation of witnesses—A Mahomedan sued to enforce a right of pre-emption in respect of a sale between Hindus founding such right on local custom. The formality of "istihad" or express invocation of witnesses required by the Mahomedan law of pre-emption was not one of the incidents of such custom. Held that the circumstance that the plaintiff was a Mahomedan did not preclude him from claiming to enforce such right

as a condition precedent to the enforcement of such right Fakir Raza v Enam Baksh B L R Sup Vol, 35, Bhodo Mahomed v Radia Churn Balia, 13 N W R, 332 referred to Kudratulla v Motins Mohan Shaha, 4 B L R, F B, 134; and Dwarka Das v Husain Baksh 1 L R 1 All 564 distinguished Chowdhry Bry Lal v. Goor Sahai, F B Rul June-Dec 1867, p 129, and Jai Kaur v Hira Lal, 7 N W, 1 followed Husain v Daulat Ram 1 L R, 5 All, 110

35

Hindus—Province of Behar.—The custom of pre-emption has been recognized among Hindus in the province of Behar Joy Kozar v Stroop Narain Thakoor [W. R, 1864, 250

MAHOMEDAN LAW—PRE-EMPTION

—continued.

1. RIGHT OF PRE-EMPTION—continued.

80. Large or small estates.—

The right of a shareholder to pre-emption exists whether the parcel of land sold, and in respect of which the claim is made, be large or small. *Jehan-gir Bakhsh v. Lala Bhikari Lal* [6 B. L. R., 42 note]

JAHANGIR BAKSH v. BHICKARIE LAL [11 W. R., 71]

S. C. affirmed on review. IN THE MATTER OF THE PETITION OF JEHANGIR BAKSH [7 B. L. R., 24; 11 W. R., 480]

MAHATAP SINGH v. RAJATAPAL MISHRA [6 B. L. R., 43 note; 10 W. R., 314]

81. Agricultural estates—Part-

ners.—Pre-emption extends to agricultural estates, which are not merely confined to urban properties or small plots. Where there are several properties or undivided plot of land, a few trees and tanks is attached, partners in the apurtenance can claim pre-emption in respect of the properties. *Kanay Bakhsh v. KAHM-UD-DEEN AHMAD* [6 N. W., 377]

(c) PRE-EMPTION IN TOWNS.

82. Owners of upper and lower

floors of house—*Pre-emption among Hindus*.—Wherever the custom of pre-emption exists in towns or amongst Hindus, the presumption is, until the contrary be shown, that the custom is based upon the Mahomedan law of pre-emption. Therefore, where a person owns the lower floor of a house, and another person owns the upper floor, a right of way to it through the house of a third party, and sells the upper floor with its right of way, the owner of the house in which the way lies has under such custom a right of pre-emption of the upper floor, preferable to the right of the owner of the lower floor. *GANESHI LAL v. LUCHMAN DASS* [5 N. W., 31]

83. Dwelling-house—Separate

ownership of site of house.—Where a dwelling-house was sold as a house to be inhabited as it stood with the same right of occupation as the vendor had enjoyed, but without the ownership of the site,—*Held* that a right of pre-emption under Mahomedan law was attached to such house. *ZAHIR v. NUR AH* [T. L. R., 2 ALL, 99]

84.—Land from which irrigation

is received—*Owner of such land—Preferential right*.—Under the Mahomedan law, the owner of the land, through which the land in respect of which a right of pre-emption is claimed receives irrigation, has a preferential right to purchase rather than a mere neighbour. *CHAND KHAN v. NAJIB KHAN* [3 B. L. R., A. C., 296; 12 W. R., 162]

(d) MORTGAGES.

85. Accrual of right—Foreclosure

of equity of redemption.—In the case of a mortgage, the right of pre-emption does not arise until the equity

MAHOMEDAN LAW—PRE-EMPTION

—continued.

1. RIGHT OF PRE-EMPTION—continued.

86. of redemption is finally foreclosed. (BAXTER, J. dissenting.) *GUZAL MUNDAR v. TEJANAYAK SINGH* [B. L. R., Sup. Vol., 166; 2 W. R., 216]

enforce right of pre-emption—Foreclosure—Right of suit to session by mortgagee.—On the foreclosure of a mortgage, after the expiry of the year of grace, but before a decree for possession had been obtained by the mortgagor, a suit to enforce the right of pre-emption in respect of the property mortgaged is maintainable. *LALA KUNWAR v. MANGRI MEHRA* [6 B. L. R., Ap., 114]

87. out actual transfer of possession.—In a suit for a

declaration of plaintiff's right of pre-emption in a property which had been originally mortgaged, but which, owing to a subsequent arrangement, had not passed from the mortgagor to the mortgagee,—*Held*, that, as the ownership was still with the mortgagor, who could redeem his property within a stipulated period, no right of pre-emption had arisen from the Mahomedan law. *BHOWANEE PUNJAB v. PUR-CHUNNO SINGH* [11 W. R., 282]

(e) WAIVER OF RIGHT OR REFUSAL TO PURCHASE.

88. Subsequent refusal of, as against by purchaser to vendor—*Effect of, as against right of pre-emption*.—Where one of two neighbours has sold his land to a stranger, and the other neighbour has thereupon claimed a right of pre-emption, no subsequent dissolution of the contract affects the right of the pre-emptor which has once accrued and been duly asserted. *BHADU MUNDAR v. RAJNA CHURN BOTA* [4 B. L. R., A. C., 219]

S. C. *BHADO MAHOMED v. RAJNA CHURN BOTA* [13 W. R., 332]

89. Surrender of right of pre-

emption before sale.—Where an offer of sale was made to a pre-emptor, and he refused to avail himself of it, and consented to a sale to a stranger,—*Held* that after a sale to a stranger he could not set up his right of pre-emption. *BRADIA KISHOR SURYA v. KIRTI CHANDRA SURYA* [7 B. L. R., 19; 15 W. R., 247]

But see IN THE MATTER OF THE PETITION OF JEHANGIR BAKSH [7 B. L. R., 24 note]

S. C. *JAHANGIR BAKSH v. LALA BHICKARIE LAL* [11 W. R., 480]

90. Refusal to purchase when

property offered for sale—*Subsequent suit to enforce right*—*Estoppel*.—A Mahomedan offered to sell his share of certain property to a partner, and on the refusal of the latter to purchase the same, sold it to a stranger. *Held* the partner could not sue to enforce his right after the sale. *TORAL KUNWAR v. ACHHUT* [9 B. L. R., 253; 18 W. R., 401]

MAHOMEDAN LAW—PRE EMPTION

—continued

1 RIGHT OF PRE EMPTION—continued

48 ————— Conditional sale

—Right of pre-emption among coparceners—
Private partition of paltidars estate— A and B had certain proprietary rights in an eight annas patti of a certain mohal C and D had no rights in that patti but D had a small share in the remaining eight annas patti. A private partition between the pattis having taken place C and D's brother lent to B two sums of Rs 200 and Rs 199 by deeds of bai bil wufa dated the 12th and 21st June 1876 C and D subsequently instituted foreclosure proceedings and on the 5th May 1884 were put into possession of B's share in the first mentioned patti in execution of a decree which they had obtained. On the 18th April 1885 A sued C and D to enforce his right of pre-emption. Held that though the coparcenary could not be said to have ceased to exist or those who were coparceners be said to have become strangers to one another yet there being a finding that the pattis were separate it was not necessary in order to establish A's preferential right that a partition by metes and bounds should be shown to have taken place but that a private partition if full and final between the parties would have the same effect as the most formal partition on the right of pre-emption and that A's claim must therefore succeed. DIGAMBAR NISSEK : RAM LAL ROY
 [I L R, 14 Calo, 761]

49 ————— Right of support,

appendages of property —Easement— Particular in appendages of property —The right

servient tenement was a part coparcator in the appendages of the house in dispute and as such had a preferential right to purchase the house in dispute over B who was a mere neighbour. PAN CHOPDAS : JUGALDAS I L R, 24 Bom, 414

50 ————— Right of co

sharer in part of estate sold— When part of an estate is sold in execution of a decree a co-sharer in

51 ————— Shiah law—

Case in which more than two partners— Under Shiah law the authorities leave the point doubtful whether there can be any right of pre-emption in respect of property where there are more than two

MAHOMEDAN LAW—PRE EMPTION

—continued

1 RIGHT OF PRE EMPTION—continued

partners but the Court held in accordance with the practice of the Courts in which no claim for pre-emption had ever been defeated on that ground. DAMI : ASHOOHA BEBER 2 N W, 300

52. ————— Property owned

by more than two co-sharers—Shiite— The prevalent doctrine of the Mahomedan law governing the Shiah sect is that no right of pre-emption exists in the case of property owned by more than two co-sharers. DAMI : ASHOOHA BEBER 2 N W, 360 and Tafazzul Husain v Hadi Hasan Weekly Notes 1886 p 139 discussed in AMBAS ALI : MAYA PAM I L R, 12 All, 229

53 ————— Equality of

rights— Where there is a plurality of persons entitled to the privilege of pre-emption the right of all is equal without reference to the extent of their shares in the property. MOHARAJ SINGH : LALLA BHESCHUK LALL 3 W R, 71

54 ————— Claim by one

sharer— Under the Sunni law the right of pre-emption may be exercised by one or more of a plurality of co-sharers. NUNDO FERESHAD THAKUR : GOPAL THAKUR I L R, 10 Calo, 1008

55 ————— Owner of separate

share of estate—Shafee khalit— The proprietors of a divided one annas share in a four annas share of an estate is not entitled to a right of pre-emption as

56 ————— Sharers in appendages and in body of estate—A sharer in the appendages has not an equal right to pre-emption with a sharer in the body of the estate. GOKAM ALI KHAN : AGUMJET ROY 17 W R, 343

57 ————— Undefined share

58 ————— Khalit—Sharik—*Partition Effect of, as to pre-emption—* The

whether the plaintiff claimed pre-emption as khalit or sharik it may be shown by express words or it may be inferred from the written statement whether the plaintiff claimed on the one or on the other ground. Where the intention of the co-proprietors of an estate is to make a complete barwara of the whole but an inconsiderable part is by oversight or accident left out of the division, that will not have

MAHOMEDAN LAW—PRE-EMPTION

2. PRE-EMPTION AS TO PORTION OF

PROPERTY—continued.

the whole of it, he is not bound to frame his suit as a suit for the whole of the property sold, but only for so much as he would be entitled to having regard to the claims of the other pre-emptor. *Amir Hassan v. Rahim Bakhsh, I. L. R., 19 All., 466, and Durga Prasad v. Munshi, I. L. R., 6 All., 423, referred to.* *Kashi Nath v. Munshi Prasad, I. L. R., 6 All., 370, and Hussai v. Sheo Prasad, I. L. R., 6 All., 455, distinguished.* *Abdur Rahman v. Amaravati, I. L. R., 21 All., 292*

103. Suit to enforce

pre-emption to portion of property sold.—Under a deed of sale, the vendor conveyed to the purchaser five lots of land. In a suit by a third party to enforce a right of pre-emption in respect of one of the five plots,—*Held* that he could divide the bargain and sue on the ground of pre-emption for a portion only of the property covered by the deed of sale. *Jazzar-ula v. Bhikari Motla*

[6 B. L. R., 386; 14 W. R., 469]

MAHOMEDAN SINGH v. MAHABATH SINGH
[6 B. L. R., 387 note; 10 W. R., 379]

104. Sale of property

of which shares belonged to minors.—The property of several co-shares, some of whom were minors, was sold to a single purchaser under a deed of sale, which contained a covenant by the vendors who professed to act on behalf of themselves and the minors that they would compensate the vendor for any loss he might incur should the minors, when they came of age, not ratify the sale. A suit to enforce her right of pre-emption in respect of the lands sold. The lower Appellate Court was of opinion that A could not enforce her claim of pre-emption in respect of the share of the minors; and on this Court's suggestion the plaint was amended, so as to ask for enforcement of her claim in respect only of the shares of the vendors of full age. *Held* that A was bound to claim her right against all the shares, and could not enforce it in respect of some only.

ABDOOL GHFOOR v. NURBANU
[1 B. L. R., A. C., 78; 10 W. R., 111]

105. Co-shares

Minors distinct from one another.—The plaintiffs, who were shareholders in a particular mouzah, sued to enforce a claim to a right of pre-emption upon a sale under a koha for a particular sum of money by another shareholder with which the plaintiffs had no concern, to a third person who was not a share-holder. *Held* that, as the plaintiffs were entitled to claim a right of pre-emption in respect of the mouzah only and that mouzah was distinct from the other properties sold, the suit was maintainable. *Rowshan Koor v. KAN DINAL ROY*

[13 C. L. R., 45]

106. Real suits—Suit to enforce the right in respect of a part of the property sold.—The prior institution of a suit by

MAHOMEDAN LAW—PRE-EMPTION

1. RIGHT OF PRE-EMPTION—continued.

and waived his right of pre-emption. *Mahamad*

Nasiruddin v. Abdul Rahim, I. L. R., 8 All., 275, referred to. *Mahamad Yusof Khan v. Mahamad Yusof*

[I. L. R., 19 All., 334]

2. PRE-EMPTION AS TO PORTION OF PROPERTY.

99. Assertion of right as to portion of property.—Ground for refusing whole.—In the absence of sufficient ground for refusing to take the whole of the lands to be sold, the right of pre-emption cannot be asserted as to a portion only. *Cazee Ali v. Musserevoolah*

[2 W. R., 285]

100. Circumstances

discussing party to enforce the right.—The right of pre-emption cannot ordinarily be claimed in respect of only a portion of any property conveyed away in a single sale; but this rule holds good only when the property sold is one entire property. Where a single sale embraces two distinct properties, in respect of one of which a right of pre-emption resides in any person who has not a similar right in regard to the other,—*Held* that it would be equally unreasonable to rule that he could claim both, and that he could claim neither—the only reasonable rule being that he could claim as much as he could take by a decree if it were separately sold. *Sudhanar Lall v. Laboo Moobar*

101. Suit to enforce

the right in respect of a part of the property sold.—Every suit for pre-emption must include the whole of the property subject to the plaintiff's pre-emption, conveyed by one bargain of sale to one stranger; and a suit by a plaintiff pre-emptor, which does not include within its scope the whole of such pre-emptional property, is unenforceable as being inconsistent with the nature and essence of the pre-emptive right. *Izzatulla v. Bhikari Motla, 6 B. L. R., 386; 14 W. R., 469, and Basim Thakooranee v. Ram Singh, N. W., S. D., 1863, p. 894, followed.* *Omur Khan v. Mooraad Khan, N. W., S. D., A., 1865, p. 178, and Saliq Khan v. Debi Prasad, N. W., S. D., 1865, p. 178, distinguished.* *Cazee Ali v. Musserevoolah, 2 W. R., 285; Abdool Ghfoor v. Nur Banu, I. B. L. R., A. C., 78; 10 W. R., 111; Sheodul Ram v. Bhayroo Khan, N. W., S. D., A., 1860, p. 53; Gunashee Lal v. Zarat Ali, 2 N. W., 343; and referred to.* *Durga Prasad v. Munshi*

[I. L. R., 6 All., 423]

102. Suit by pre-emptor not entitled to claim the whole of the property sold.—Frame of suit.—*Held* that, where a pre-emptor with himself to claim pre-emption is only entitled to a certain portion of the property in respect of which he claims pre-emption, and not to

MAHOMEDAN LAW—PRE-EMPTION*—continued.***1 RIGHT OF PRE-EMPTION—continued****SHEO TUNUL SINGH & RAM KOOR****[W. R., 1864, 311]****KOOLDEEP SINGH & RAM DEEN SINGH****[24 W. R., 198]**

91. ——— Right of refusal on sale to stranger—*Co sharers paying rent separately*—*A and B, Mahomedan co sharers of a talukh made*

part of his share to a stranger, who was also a Mahomedan *B* was entitled to pre-emption. **KOROMALI & AMIR ALI** **3 C L R., 168**

92. ——— Right of refusal—*Conditional right—Co sharers—Minor*—Where a condition for pre-emption contained in a record of rights was intended to take effect at the time of a sale and its language implied that the co sharers in whose

arose out of special contract or general usage. **LALA RAM & BANSI** **I L R., 1 All., 207**

93. ——— "Stranger"—*"Sale"—Assignment by way of donor—Assignment in lieu of donor—Debt*—The heirs of a Mahomedan have no legal interest or share in his property so long as he is alive, and cannot therefore be re-

94. ——— Refusal to purchase without absolute relinquishment or surrender—The right of pre-emption may be claimed after a sale notwithstanding there has been a refusal to purchase before the sale where there has been no absolute surrender or relinquishment of the right and such refusal has been merely in consequence of a dispute as to the actual price of the property. **ABADI BEGAM & INAM BEGAM** **[I L R., 1 All., 521]**

MAHOMEDAN LAW—PRE-EMPTION*—continued.***1 RIGHT OF PRE-EMPTION—continued**

95. ——— Acquiescence in sale—*Notice to pre-emptor of projected sale—Purchase-money—Inaction of pre-emptor*—The plaintiff in a suit to set aside a sale on the ground of pre-emption alleged that the true amount he made he became aware that a sale was being negotiated, nor did he

with the vendee, and to have waived his right of pre-emption. **BAHAJRON SINGH & LAMMAN**

[I L R., 7 All., 23]

96. ——— *Relinquishment of right*—According to the Mahomedan law, if a pre-emptor enters into a compromise with the vendee, or allows himself to take any benefit from him in respect of the property which is the subject of pre-

right of pre-emption, and were precluded from enforcing it. **HABIB UY VISSA & BAKKAT ALI**

[I L R., 8 All., 275]

interfered, or become a purchaser, it was held that he was not entitled to declining to purchase. **MUNIRAH & ALI KHAN & ABDUL RAS** **I L R., 11 All., 108**

98. ——— *Right of pre-emption by pre-emptor to purchase from vendee*—**[I L R., 11 All., 108]**

without respecting to a sale, and where a pre-emptor, he cannot be said to have acquiesced in the sale.

MAHOMEDAN LAW—PRE EMPTION

—continued—

2 PRE-EMPTION AS TO PORTION OF PROPERTY—*continued.*

rival pre emptors in no way entitles a pre-emptor to depart from the general rule of pre-emption by suing for a portion only of the property sold. *Kashi Nath v. Mukta Prasad I L R., 6 All. 370* referred to *HULASI v. SHRO PRASAD I L R., 8 All. 455*

107.

Wab-ul urz—

Rival suits—Decree not to allow either claimant to pre-empt part only of the property over which he has a pre-emptive right—Where two rival pre-

divided by the decree of the Court between the successful pre-emptors the Court must take care that the whole share must be purchased by both pre-emptors or on the default of one by the other or that neither of them should obtain any interest in the property in respect of which the suits were brought. In two rival suits for pre-emption the Court gave one claimant a decree in respect of a three annas share, and the other a decree in respect of a two-annas six pies share of certain property each decree being conditional on payment of the price within thirty days. The Court further directed that in case of either pre-emptor making default of payment within the thirty days the other should be entitled to pre-empt his share on payment of the price thereof within fifteen days of such default. Both pre-emptors made default of payment within the thirty days. One of them within the further period of fifteen days paid into Court the price of the share decreed in favour of the other and claimed

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Preemptor

disentitled by laches from claiming portion of

if he is entitled to claim it and cannot obtain a decree for part only of such property, applies to the case of a pre-emptor who claims the whole but who is at the time disentitled by his own act or laches to maintain the claim as to a part. Such a disqualification prevents the pre-emptor from maintaining his suit for any portion of the property included in the sale. Where therefore a pre-emptor was disqualified from claiming a portion of the property sold by not having made a prompt demand in accordance with the Mahomedan law in respect of such portion — *Held* that he was thereby prevented from maintaining his suit for another portion claimed under the provisions of the *wajab ul urz* of a village.

MAHOMEDAN LAW--PRE EMPTION

—continued

2 PRE EMPTION AS TO PORTION OF PROPERTY—concluded

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W991b MI 45X—

Pre-emptor disentitled by his own conduct to pre-empt part of the property sold—Pre-emptor not entitled to pre-empt any portion thereof—Where a pre-emptor sued for possession by right of pre-emption of certain property sold by one and the same sale-deed, claiming as to one portion of the property sold under the Mahomedan law and as to another under the wajib-ul-urz and it was found that he had by his own acts or omissions disentitled himself from claiming that portion of the property to which the Mahomedan law applied it was held that the pre-emptor was not entitled to pre-emption in respect of any portion of the property covered by the said sale-deed.

Muhammad Bilayat Ali Khan v Abdul Fiaz,
I L R, 11 All. 105, followed. *MUSTAFA ULHAQ*
v *UNED BISHI*. I L R, 21 All. 119

3 CEREMONIES

110 ————— Necessity of proof of performance of preliminary ceremonies — In the case of pre-emption strict proof is necessary of the performance of the preliminaries. ROBERTSON KHA NUM & LALLUN W R. 1864. 117

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PROKAS SINGH & JOGESWAR SINGH

[3 B L R. A C. 12

III

The right of

119

* Omission to pay

form ceremonies—Evidence of relinquishment of right—Negligence—There are certain ceremonies to be performed in order to lay a foundation for the establishment in a Court of law of a right of this kind when it is menaced and though on the one hand, the effect of the omission to prove performance of these ceremonies is not called by the plaintiff in a later petition put in during the progress of a case, just as on the other that omission is not of necessity evidence of a relinquishment of the right yet in this case, in which defendant had exhibited strange haste in some stages of the negotiations with the apparent purpose of forestalling plaintiff in his rights; but plaintiff's proceedings had been characterized with great negligence, if nothing worse; it was held that the plaintiff was not

MAHOMEDAN LAW—PRE-EMPTION

—continued.

3 CEREMONIES—concluded.

146. — *Necessity of immediate demand*—To entitle a person to a right of pre-emption under Mahomedan law, it must be shown that the talab-i-istahad was made as soon as possible. **NURADDIN MAHOMED v. ASGAR ALI**
[12 C. L. R., 312]

147. — *Necessity of immediate demand*—It is not a binding rule of law that the talab-i-istahad by a pre-emptor, if made within a day after the receipt of intelligence of the purchase, is necessary in time for the preservation

[8 B. L. R., 160. 16 W. R., F. B., 13]

148. — *Mode of performance*—The personal performance of the talab-i-istahad, or demand for pre-emption by the pre-emptor, depends on his ability to perform it. He may do it by means of a letter or messenger, or may depute an agent, if he is at a distance and cannot afford personal attendance. **WAQID ALI KHAN v. LALA HANUMAN PRASAD**
[4 B. L. R., A. C., 139. 12 W. R., 484]

IMAMUDDIN v. SHAH JAN BIBI

[6 B. L. R., 167 note]

149. — *Delay in making demand—Ceremonies of affirmation*—A delay of one day is not such a delay as to interfere with the right of pre-emption under the Mahomedan law. The demand by affirmation should be made with the least practicable delay. The ceremony of affirmation should be carried out before either the vendor or the purchaser, or be performed on the premises. **MAHOMED WARIS v. HAZEL I. MAHMOODDEEN**
[6 W. R., 173]

150. — *Delay in making demand*—A claim to pre-empt on should be made as soon as the claimant becomes aware of the completion of the sale. **AJODHYA POORER v. SONUN LALL**
[7 W. R., 428]

ELAHKE BUKSH v. MOHAN . 25 W. R., 0

151. — *Performance of preliminary ceremonies—Expression of readiness to purchase*—Under the Mahomedan law, when a person claims a right of pre-emption it is necessary to the validity of his claim that he should promptly assert, after the completion of the sale, his willingness to become a purchaser. **GHOLAM HOSSEIN v. ABDOL HADIR** . 5 N. W., 11

152. — *Delay in making preliminary declaration*—According to the Mahomedan law of pre-emption, the first thing to be done by the claimant of pre-emption is to make the preliminary declaration. First going to his house to get the money is not a compliance with the law. **MOHA SINGH v. MOSBAD SINGH** . 5 W. R., 203

MAHOMEDAN LAW—PRE-EMPTION

—continued

4 MISCELLANEOUS CASES

153. — *Enforcement of right—Delivery or registration of bill of sale*—A contract having been entered into for sale and purchase of

tered, or payment made. **LUCHMER NARAIN v. BHREMUL DOSS** . 8 W. R., 500

See GINDHAREE LALL v. DEANUT ALI
[21 W. R., 311]

[1 Agra, 184]

155. — *Tender of price—Necessity of tender*—It is not incumbent on a pre-emptor to tender the price at the time of making his claim. **KHOFFER JAN BEEB v. MOHOMED MENDES**
[10 W. R., 211]

HEERA LALL v. MOORUT LALL . 11 W. R., 275

156. — *Statement of readiness and willingness to pay*—In a suit for pre-emption it is unnecessary to prove a tender of the actual price paid for the property claimed, it being sufficient if the person claiming the right to pre-emption states that he is ready to pay for the land such sum as the Court may assess as the proper price for the property. **ANUDO PERSHAD BHAKUR v. GOPAL THAKUR** . I L. R., 10 Calc., 1008

157. — *Lien of vendor*—The right of the first purchaser is simply a vendor's lien, and he is to retain the property until he has the money from the party claiming pre-emption. It is not put of the Mahomedan law that the claimant of a right of pre-emption must carry the money in his hands and tender it to the first purchaser. A right of pre-emption may be decreed in respect of land within the path of the party claiming such right. **BULBOOD SINGH v. MAHADEO DUTT** . 3 W. R., 10

158. — *Conclusion of contract of sale*—As soon as a contract is satisfied by acceptance and the vendor has gone so far that he cannot legally draw back it is time for the pre-emptor to step in. A pre-emptor is not required to tender the purchaser's price or any price at the time of making his demand, and so long as a party claiming a right of shuffa pays the amount which the Court considers to be the proper price, he brings himself in Court within a reasonable time. On the question of pre-emption the Court must act in strict accordance with the provisions of the Mahomedan law rather than on what it thinks just and equitable. **ABEEK BUKSH alias GOLAM NUBER v. KALOO LUSHER**
[23 W. R., 4]

MAHOMEDAN LAW—PRE-EMPTION

—continued

3 CEREMONIES—continued

a right of pre-emption, that witnesses should hear the exclamation it involves, yet it does not follow that, as matter of evidence, Courts of law are bound to decree a suit to establish such a right simply on the deposition of the plaintiff **ABDOOL HOSSEIN KHAN v. GOBIND CHANDRA SHARMA** 11 W R., 404

125. ————— *Talab-i-ishtahad—Necessity of proof of performance*—To establish a claim to pre-emption under the Mahomedan law, it is not enough to prove that the ceremony of talab-i-mawasabat was performed; it is also necessary to prove the talab-i-ishtahad. **NANERASE SINGH v. LUGHMEER NARAIN POORER** 11 W R., 307

126. ————— *Necessity of*

10 W. R., 103

127. ————— *Necessity of*

128. ————— *Mode or form of ceremony—Performance—Hindus*—To the due performance of the ceremony of talab-i-ishtahad, it is not necessary that any particular form of words should be employed. **RAMDULAH MISSER v. JHU MACK LAL MISSER**

[8 B L R., 455. 17 W. R., 265]

129. ————— *Mode or form of ceremony—Talab-i-mawasabat*—To establish a

130. talab-i-mawasabat—has already been performed. **GIEDHAREE SINGH v. ROJUN SINGH**

[24 W. R., 462]

130. ————— *Requisites for ceremony—Invocation of witnesses*—To the ceremony of ishtahad or talab-i-ishtahad it is essential that there should be an express invocation of witnesses. **PROKAS SINGH v. GUOFSEWAR SINGH**

[2 B L R., A. C. 12]

131. ————— *Requisites for ceremony—Declaration and invocation of witnesses*

MAHOMEDAN LAW—PRE-EMPTION

—continued

3 CEREMONIES—continued.

bear witness therefore to the fact" **JADU SINGH v. RAJKUMAR**

[4 B L R., A. C. 171: 13 W R., 177
DAYAMOOLLAN v. KIRTEE CHUNDER SUMAR
[18 W R., 530]

132. ————— *Requisites for ceremony—Invocation of witnesses to demand*—According to the Mahomedan law, it is essential to the performance of the talab-i-ishtahad that third persons should be formally called upon, either in the presence of the purchaser or on the land, or, if the vendor is in possession in the presence of the vendor, to bear witness to the demand. **GOLAKRAM DEB v. BRINDABAN DEB**

[6 B L R., 165: 14 W R., 265]

133. ————— *Performance in presence of purchaser*—The ceremony of talab-i-ishtahad or affirmation before witnesses, may at the option of the pre-emptor, be performed in the presence of the purchaser only, though he has not yet obtained possession. **JANGER MAHOMED v. MAHOMED ANJAD**

[1 L R., 5 Calc., 509. 5 C L R., 370]

134. ————— *Performance in presence of person in possession, vendor or purchaser*—To establish the right of pre-emption, the talab-i-ishtahad or affirmation before witnesses, must be performed in the presence of the person in possession of the lands whether it be the vendor or the purchaser. **CHAMBOO PASBAN v. PUHLWAN ROY**

[16 W R., 3]

135. ————— *Omission to invoke witnesses—Talab-i-mawasabat—Ceremonies of "immediate demand" and "demand with invocation"*

SINGH v. DULPUT SINGH 1 L R., 10 Calc., 561

136. ————— *Mode of invocation of witnesses*—In a suit to establish the right of pre-emption where the witnesses said that on the refusal of the vendor the pre-emptor had nominated them witnesses, the lower Courts were held to have been just in their inference that he had complied with the exigency of the Mahomedan law. **RAJ LALL SINGH v. AMTARCHAND** 23 W R., 152

137. ————— *Invocation of witnesses—Talab-i-ishtahad—Necessity of invocation of witnesses—Performance of talab-i-ishtahad and invocation of witnesses*—When the talab-i-ishtahad (i.e. mawasabat) is made in the presence of witnesses and the witnesses are then called to bear witness to the fact it is not necessary to invoke witnesses.

MAHOMEDAN LAW—PRESUMPTION OF DEATH—concluded.

5. ————— *Alienation of pro-*

Brothers and a sister on surviving them, was rightly dismissed, under Mahomedan law, on the ground that the death of the missing person was not proved, and ninety years had not elapsed from his birth. A sale

reappearance of the missing person. *RAKHI BIBI v. RAHAT BIBI* . 7 N. W., 191

6. ————— *Act I of 1872,*

father was alive, and that during his lifetime the plaintiffs could not claim his share in such portion.—*Held* by STUART, C J, and SPANKIE, J, that the suit, being one to enforce a right of inheritance, must be governed by the Mahomedan law relating to a "missing" person. *Parveshar Rai v. Bisheeshar Singh*, 1 L R, 1 All, 53, distinguished. *Held* by STUART, C J, that, according to Mahomedan law, ninety years not having elapsed from F's birth, his share could not be claimed by the plaintiffs, but must remain in abeyance until the expiry of that period or his death was proved. *Held* by PEARSON, J, and SPANKIE, J, that F being a "missing" person when his parents died, his daughter, according to that law, was not entitled to hold his share either as heir or trustee. *HASAN ALI v. MAHERBAW*

[L. L. R., 2 All, 625]

MAHOMEDAN LAW—SALE.

See MAHOMEDAN LAW—MORTGAGE.

[L. L. R., 20 Bom, 116]

MAHOMEDAN LAW—SLAVERY.

See SLAVERY . 1 L. R., 3 Bom, 422

[12 Bom, 156]

MAHOMEDAN LAW—SOVEREIGNTY.

—Sovereign's rights as to property—By Mahomedan law, *semble*, the dominion of the sovereign is equally absolute and uncontrolled over all his possessions of every kind; but *quere* whether all his possessions are necessarily subject to the ordinary rules of inheritance and partition among descendants. A reigning Mahomedan prince may possess property held *jure coronæ*, as well as

MAHOMEDAN LAW—SOVEREIGNTY—concluded.

property acquired by some other title. *GHULAM MUHAMMAD NAJAMUT KHAN v. DAIR* [1 Mad., 281]

MAHOMEDAN LAW—USURPED PROPERTY.

—Conversion of usurped property—*Right of suit for damages by party injured*—Under Mahomedan law, where there has been a change in usurped property, the injured party has a claim to recover damages in respect of the property usurped, but cannot claim to share in the property into which it has been converted. An heir cannot therefore claim estates purchased with moneys belonging to the ancestral estate of the deceased which have been misappropriated by a co-heir, but must claim to recover his share in money. *NOOR-OOOL HOSSEIN v. MOOVEERAM* . 4 N W, 103

MAHOMEDAN LAW—USURY

1 ————— *Interest—Act XXVIII of 1855*—The custom of taking interest as between Mahomedans is recognized by the Courts. *Semble*—*Per* PHILL, J (dissenting from *Ram Lall Mookerjee v. Haran Chunder Dhar*, 3 B L R, 308, O C, 130)—Act XXVIII of 1855 repealed the Mahomedan laws relating to usury. By "laws relating to usury" the Legislature meant laws affecting the rate of interest. *MIA KHAN v. BIBI BIBIJAN* 5 B L R, 600 14 W. R., 308

2 ————— *Interest on dower.*—With respect to the awarding of interest on a claim of dower by a Moslem widow, the principle of Mahomedan law will not apply. *SOORMA KHATOON v. ATTAFPOONVISSA KHATOON* 2 Hay, 210

MAHOMEDAN LAW—WIFE.

1 ————— *Power of alienation—Power of wife as one of several tenants in common to grant lease*—The District Judge's decision that a Mahomedan married woman cannot execute a valid lease which may endure beyond her lifetime, of property of which she is one of several tenants in common, held bad in law. *NICHHADHAI PRAOJI v. ISSEKHAN HAJI ABDUL KHAN* [3 Bom., 313. 2nd Ed., 297]

3 ————— *Husband and wife—Presumption of ownership of property*—Where rights of ownership had been exercised for a series of years by the husband, and never by the wife, over property which had descended from his wife's father (his own uncle), the husband having mortgaged the property and dealt with it in all respects as if he were the owner, and the wife possessing none of the documents which she would have been able to produce if she had acted as the owner, it was held that she had no such interest in the property as entitled her to maintain a suit to recover possession of it after it was sold in satisfaction of the husband's debts. *OLEER-CONTISSA BIBE v. RAMDHUN ROY* 11 W. R., 17

MAHOMEDAN LAW—WILL—continued.

13 ————— *Consent of heir*
Evidence of consent—According to Mahomedan law, a will is valid as against an heir if he affixed his signature to it as a consenting party thereto without undue influence. **KHADESAH BEEB v. SUFFUR ALI**. 4 W. R., 36

14 ————— *Construction of a letter containing a bequest—Suicide of testator.*
 A letter, written shortly before the testator's death, contained directions as to his property, concerning the proprietary right therein in equal shares on Accord-ahomedan
 urs after, the inten-
 tion of suicide. The letter stated that he had taken

taken poison for the above purpose, was invalid by

before the taking the poison, that the other evidence tended strongly to show that it was written before, and that therefore the reason alleged against the validity of the will was not applicable to the case. **MAZBAR HUSSEIN v. LOONAH BINT**

[I. L. R. 21 All., 61
 L. R., 25 I. A., 219]

15 ————— *Form of will—Will*
Evidence of will—The rule that by Mahomedan law a will does not require to be in writing is universal. The omission to write the will where there was ample time for that purpose, may throw
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 f the
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 drit
 into writing will not deprive it of legal effect. **TANKEZ BEGUM v. FURHUT HOSSEIN**

[3 N. W., 55]

16 ————— *Acquisitive will*
Law of Shiah sect—A nuncupative will by a Mahomedan of the Shiah sect bequeathing property less in amount than one third of his estate held valid by the Mahomedan Law, and if it was given to the bequests. *Semite*—Such verbal bequests would have been valid even if he gave a third of the testator's estate provided the heirs occurred in the bequests. **AMINOODDOWLAH v. ROSHUM ALI KHAN**

[5 Moore's I. A., 162]

17 ————— *Proof of inten-*

tion to make this disposition was produced—Held that the disposition was valid against a claim of possession set up by a rival claimant. **MAHOMED ALTAF ALI KHAN v. AHMED BOKSH**. 25 W. R., 121

MAHOMEDAN LAW—WILL—continued

to enjoy it in lieu of her dower, held to be a disposition of a testamentary nature, and void of the requisites of a sale under the Mahomedan law. **MUGUL BEGUM v. FUKERUN BEEB** 3 Agra, 288

19 ————— *Construction of will*—A Mahomedan lady made a will disinheriting her nearest relations and leaving her whole estate to her nephew "Duslun had duslun battun had battun" (from generation to generation). Held that the devise to the nephew was absolute to him, and did not extend to his sons in case of his death before his aunt. **OOMUTOONISSA BEEB v. OOREEFOONISSA BEEB**

[4 W. R., 63]

20 ————— *Disposition of estate among sharers—Words of duration of estate not denoting more than interest for life—Construction—Restriction upon alienation—Words such as 'always' and 'for ever,' used in an instrument disposing of property do not in themselves denote an extension of interest beyond the life of the pur-*

portant occupancy of the full sixteen annas of all the estates. All the matters of management in connection with this estate should necessarily and obligatorily rest 'always' and 'for ever' in his hands." It also with the express object of keeping the property in the family attempted to restrict alienation by the sharers. There were other provisions to the same effect in regard to the management by his son who retained it till his death. The defendant, who was a son of that son having claimed to retain possession of the property in order to carry out the provisions of the will—Held that on its true construction the plaintiff a sharer and he was entitled to the full proprietary right in and to the possession of her share, notwithstanding the above expressions in the will and the attempt to control alienation by the sharers. **MUHAMMAD ABDUL NAJID v. FATIMA BINT**

[I. L. R., 8 All., 39
 L. R., 12 I. A., 159]

21 ————— *Request to per-*

property was not to be divided until F and E had attained the age of twenty, and as to the share of the lawful son of J, it was to be held in trust until such son should reach the age of twenty. At the time of the testator's death no son of J was living. Shortly after his death, a son was born to J, but he lived

MAHOMEDAN LAW—WILL.

See MAHOMEDAN LAW—GIFT—VALIDITY.

[W. R., 1884, 221]

1 W. R., 17, 152

8 W. R., 84

7 N. W., 313

I. L. R., 9 All., 357

See PARTIES—PARTIES TO SUIT—EXECUTORS . . . I. L. R., 19 Bom., 83

See RECEIVER . . . I. L. R., 19 Bom., 83

1. ——— Gift operating as will—*Gift in contemplation of death—Legacy.*—According to the Mahomedan law, a gift made in contemplation of death, though not operative as a gift, operates as a legacy. Ordinarily it conveys to the legatee property not exceeding one-third of the deceased's whole property, the remaining two-thirds going to the heirs. In the absence of heirs, a will carries the whole property. *EKIN BIBEE v. ASHRUF ALI*

[1 W. R., 152]

2. ——— Invalid will—*Will disinheriting heirs.*—A wasi-ut-namah, or will, divesting all the property from the next heirs, is illegal under Mahomedan law. *JUMUNOODDERN AHMED v. HOSEIN ALI* . . . 2 W. R., Mis., 49

3. ——— *Will made without consent of heirs.*—A will which has never received the assent of the heirs of the testator is inoperative to alter their rights to succeed according to the Mahomedan law of inheritance. *KADIR ALI KHAN v. NOWSHA BEGUM* . . . 2 Agra, 154

4. ——— *Will devising more than half estate to daughter.*—Under the Mahomedan law, a person cannot devise more than one half of his estate to his daughter, and a will devising more to her is invalid. *MAHOMED MUDUN v. KHODEZUNNISSA alias KHOOKEE BEBEE*

[2 W. R., 181]

5. ——— *Bequest by married woman—Consent of husband.*—Held that the bequest by a married woman of the whole of her estate to her brother, without the assent of her husband, was invalid according to the Mahomedan law. *MUHAMMAD v. IMAMUDDIN*

[2 Bom., 53; 2nd Ed., 50]

6. ——— *Legacy to one of several heirs—Want of consent of others.*—A legacy cannot be left to one of a number of heirs without the consent of the rest. *ABEDUNNISSA KHATOON v. AMBEROONISSA KHATOON*

[9 W. R., 257]

7. ——— *Power of testator to interfere with devolution of property.*—By the Mahomedan law, a testator may bequeath one-third of his estate to a stranger, but cannot leave a legacy to one of his heirs without the consent of the rest. A will purporting to give one-third of the testator's property to one of his sons as his executor, to be expended at the son's discretion in undivided pious uses, and conferring on such son a beneficial interest in the surplus of such third share,—Held to be an attempt to give, under colour of a religious bequest,

MAHOMEDAN LAW—WILL—continued.

a legacy to one of the testator's heirs, and to be invalid without the confirmation of the other heirs. *KHAJOOROONNISSA v. ROUSHAN JEHAN*

[I. L. R., 2 Calc., 184; 26 W. R., 36]
I. R., 3 I. A., 291

8. ——— *Will made without consent of heirs.*—Plaintiffs claimed as purchasers from the daughters (as heirs) of a Mahomedan. The son, intervening, was made a party to the suit, and set up a will executed by his father, under which a large portion of the estate was endowed for charitable purposes, and the rest divided among the heirs. The lower Appellate Court found the will to be *bond fide*, and dismissed the suit. Held that, the will having been put in issue, the lower Appellate Court should have found whether the heirs were consenting parties; for the bequest by a Mahomedan of more than one-third of his estate without the consent of his heirs is invalid. *BABOOJAN v. MAHOMED NURCOOL HUQ* . . . 10 W. R., 375

9. ——— *Suit for share of property against persons in possession under will—Onus probandi.*—In a suit for an undivided share of property claimed by the plaintiffs as heirs of the deceased owner, where the defendants pleaded possession under a wasi-ut-namah, or will,—Held that the Court could not tell how far the will was valid or invalid under the Mahomedan law, which allows a testator to give away from his heirs only one-third of his property, and therefore the onus was on the defendant to furnish a complete statement of the testator's property at the time of his death; failing which the plaintiff's claim must prevail. *SUKOONUT BIBEE v. WARRIS ALI* . . . 22 W. R., 400

10. ——— *Consent of heirs—Consent before testator's death.*—By Mahomedan law the consent given by heirs to a testator's will before his death is no assent at all; to be valid, it must be given after the testator's death. *NUSRUT ALI v. ZEINUNNISSA* . . . 15 W. R., 146

11. ——— *Assent given after testator's death.*—According to Mahomedan law, the consent of the heirs can validate a testamentary disposition of property in excess of one-third of the property of the testator, if the consent be given after the death of the testator. But if the consent be given during the lifetime of the testator, it will not render valid the alienation, for it is an assent given before the establishment of their own rights. *CHERACHOM VITIL AYSHA KUTTI UMAM v. VALIA PUDIACE BIATHU UMAM* . . . 2 Mad., 350

12. ——— *Consent of heiress to will—Evidence of consent.*—To establish the consent of a Mahomedan heiress to a will, evidence of some act done at the time of its execution, or some act done subsequently, amounting to a ratification of it, is necessary. The Court will not presume the consent of a Mahomedan heiress to a will, even although she continues to reside in a dwelling-house assigned to her by the will in question. *RAMCOMER CHUNDER ROY v. FAQUEEROONISSA BEGUM*. *FAQUEEROONISSA BEGUM v. SUFDAR ALI*

[1 Ind. Jur., O. S., 118]

MAHOMEDAN LAW—WILL—concluded.

it was argued, the gift was confined by reason of its being only of the profits *Held* that, in order to show that an unlimited gift of the profits was less than a gift of the corpus, some evidence should be found in the context, or in the circumstances affecting the property, tending to show restriction of the

[I L R, 25 Calc, 818
I R, 25 I A, 77
2 C W N, 385

27. ———— *Executor—Right to nominate successor*—Under Mahomedan law, an executor is entitled to nominate a successor to carry out the purposes of the will under which he was made an executor *HAFEEZ OOR RAHMAN v KHADEM HOSSEIN* 4 N W, 106

28 ———— *Khoja Mahomedan administrator with the will annexed—Executor, Powers of*—The powers of a Khoja Mahomedan executor or administrator like those of a Cutchi Mahomedan executor or administrator, seem to be generally limited to recovering debts and securing

succeeded to those powers and in a suit brought against him as such administrator by an alleged creditor of the testator's estate, represented all the persons interested in the estate *AHMEDBOY HUSSEIN v VULLEBOY CASSEBOY*

[I L R, 8 Bom, 703

29 ———— *Infidel executor*—The appointment by the will of a Mahomedan of an infidel executor does not invalidate the will. All the acts of such an executor and his dealings with the property under the will until he is removed and superseded by the Civil Court, are good and valid *Quere*—Whether if an application were made by a person interested in the will to have the infidel executor removed, and a proper person appointed in his place the application would be granted. *JEHAN KHAN v MANDY*

[I B L R, S N, 16. 10 W R, 185

MAINPRIZE.

side of the Court of Chancery in England. The power of the Common Law side of the Court of

MAINPRIZE—concluded.

Chancery to issue such writ was not conferred on the Supreme Court, nor is there anything in the Charter of the High Court to give that Court power to issue it *IN THE MATTER OF AMEER KHAN*

[8 B. L. R., 456

MAINTENANCE.

See CASES UNDER CRAMPERTY

See CASES UNDER DECREE—FORM OF DECREE—MAINTENANCE

See CASES UNDER EXECUTION OF DECREE—MODE OF EXECUTION—MAINTENANCE

See HINDU LAW—INHERITANCE—ILLEGITIMATE CHILDREN

[I L R, 1 Bom, 97
4 W R, P. C, 132. 7 Moore's I A, 18
I L R, 23 Bom, 257
I L R, 23 All, 191

See CASES UNDER HINDU LAW—MAINTENANCE.

See CASES UNDER LIMITATION ACT, 1877 ART 123

See CASES UNDER MAHOMEDAN LAW—MAINTENANCE.

See MALABAR LAW—MAINTENANCE.

See PARTIES—PARTIES TO SUITS—MAINTENANCE, SUITS FOR.

See CASES UNDER SMALL CAUSE COURT—MOPUR—JURISDICTION—MAINTENANCE.

See SMALL CAUSE COURT—PRESIDENCY TOWNS—JURISDICTION—MAINTENANCE

future, Attachment of—

See CASES UNDER ATTACHMENT—ORDERS OF ATTACHMENT—MAINTENANCE

MAINTENANCE, ORDER OF CRIMINAL COURT AS TO—

See APPEAL IN CRIMINAL CASES—ORDINAL PROCESS—ORDERS

[W. R. C, 10
S. R. C, 12, 23

See MAGISTRATE—INTERPRETATION OF LAWS—CASES . . . I. C. L. R. 20

See THE JUDICIAL—INTERPRETATION [I L R, 31, 221

See JUDICIAL—ORDINAL CASES—MISJUDICIAL CASES . . . S. R. C, 12, 23

See JUDICIAL—ORDINAL CASES—MISJUDICIAL CASES . . . S. R. C, 12, 23

See JUDICIAL—ORDINAL CASES—MISJUDICIAL CASES . . . S. R. C, 12, 23

See JUDICIAL—ORDINAL CASES—MISJUDICIAL CASES . . . S. R. C, 12, 23

See JUDICIAL—ORDINAL CASES—MISJUDICIAL CASES . . . S. R. C, 12, 23

MAHOMEDAN LAW—WILL—continued.

only for a few months. The testator's brother *A* was appointed executor of the will. In 1878 *V* and *E* sued the executor *A* and his son *S* for an account and division of the property, and by a consent-decree passed in 1881 three-fifths of the property were given to *V* and *E*, and the remaining two-fifths to *A* and *S*. The estate was duly divided in accordance with the decree, and the parties got possession of their respective shares. In February 1884 another son was born to *M*, and in May 1884 the infant brought this suit by his father and next friend, claiming to be entitled, on his attaining the age of twenty, to one-third of the property received by *V* and *E*, under the consent-decree. *Held* that the plaintiff could not recover, not having been in existence at the date of the testator's death. According to Mahomedan law as well as Hindu law, persons not in existence at the death of a testator are incapable of taking any bequest under his will. **ABDUL CADUR HAJI MAHOMED v. TURNER (OFFICIAL ASSIGNEE)**

[I. L. R., 9 Bom., 158]

22. ————— *Charitable bequest—Stat. 43 Eliz., c. 4—"Dharm," Meaning of.*—In the will of a Khoja Mahomedan, written in the English language and form, a gift of a fund "to be disposed of in charity as my executor shall think right" is a valid charitable bequest, and it will be referred to the proper officer of the Court to settle a scheme for the application of the fund to charitable objects by analogy to Act 43 Eliz., c. 4. Where, however, the will is in the native language, and the word "dharm" or "daram" is used the word is held too vague and uncertain for the gift to be carried into effect by the Court, the Court dharm or daram including many objects not comprehended in the word "charity" as understood in English law. **GANGBHAI v. THAYAR MULLA** . . . 1 Bom., 71

23. ————— *Invalid gift for want of assent of heirs.*—A Mahomedan by his will bequeathed the rents of a certain house in trust for his children, and directed that, after the death of the last surviving child, such rents should be paid to the Committee of the District Charitable Society. *Held* that, as the gift to the children being a gift to the heirs of the testator to which there was no assent was invalid, the gift to the District Charitable Society also failed. **FATIMA BIBEE v. ARIFF ISMAILJEE BHAM**

[9 C. L. R., 66]

24. ————— *Prohibition of alienation or partition.*—A Mahomedan testator by will decreed that his moveable estate should not be divided or alienated by any of his heirs, and directed his executor to appropriate the net income according to a schedule annexed to his will, among certain specific persons divided into two classes, *viz.*, those who took and those who did not take by inheritance. *Held* that the intention of the testator was to endeavour to prevent any partition of the estate, and not to convert his heirs-at-law into mere annuitants taking grants from him. The executor held the estate in trust to pay the profits in certain defined shares to the heirs, and their representatives could not plead adverse possession against them so as to bar their

MAHOMEDAN LAW—WILL—continued.]

claims by lapse of time. **KHAJOORUNISSA v. ROHEE-MUNNISSA** . . . 17 W. R., 190

25. ————— *Administration of the estate of a Shiah Mahomedan under his will—Alleged gift—Claims as between his childless widow and the estate—Right of childless widow to maintenance—Legacies chargeable on one-third only of the estate—Commission to executor.*—A Mahomedan of the Shiah sect, dying without issue, left a widow. She as his childless widow was entitled to one-fourth of his estate other than land. In the administration of his estate the following matters arose and were decided. The handing over, with formal words of gift by the testator to the widow, of deposit receipts, with intent afterwards to transfer the money into her name at the bank, which transfer was not effected, would not constitute a gift. A commission of three per cent. on the proceeds of the sale of the testator's property, directed by his will, was bequeathed to the executor. This was by way of remuneration, but was in no sense a debt. As a legacy, it was payable only out of one-third of the estate which passed by the will. A Mahomedan widow is not entitled to maintenance out of the estate of her late husband, in addition to what she is entitled to by inheritance or under his will. *Hedaya, Book IV, Ch. 15, s. 3, Mahomedan law, Imamia, by N. E. Baillie, p. 170*, referred to. No contract could be implied that this widow should pay an occupation rent on account of her having continued to occupy a house belonging to the testator's estate, for eleven months after his death. Her occupation was referable to her position, and no notice was given to her that rent would be charged. A Mahomedan childless widow is not by Shiah law entitled to share in the value of land forming the site of buildings that belonged to her husband's estate. Her one-fourth includes, as was admitted, a share in the proceeds of sale of the buildings. The text quoted in Book VII, C. IV, p. 293, of Baillie's Mahomedan Law, Imamia, is not to be construed as referring only to agricultural land. **AGA MAHOMED JAFFER BINDANIM v. KOOLSOM BIBEE. KOOLSOM BIBEE v. AGA MAHOMED JAFFER BINDANIM** . . . I. L. R., 25 Cal., 9 [L. R., 24 I. A., 196 1 C. W. N., 449]

26. ————— *Construction of the will of a talukhdar—Quantity of estate devised—Unlimited gift of share of profits in a talukhdari estate under Oude Estates' Act I of 1869.*—The will of a talukhdar, who left daughters, declared that in respect of his estate, in its entirety and without division, the engagement for the revenue should be in the name of his eldest daughter's son and so continue. Besides this grandson, another, the son of his second daughter, as well as two other daughters of the testator, were to be equal sharers entitled to the profits of the estate. Of this estate the will said, "The profits may be divided equally among all the four persons." The talukh had been included in the first and third of the lists prepared in conformity with the Oude Estates' Act, 1869. On a question whether under the will the son of the second daughter took a heritable interest, or only a life-estate, to which

MAINTENANCE, ORDER OF CRIMINAL COURT AS TO—*continued.*

Complaint by a wife against her husband for maintenance.—A complaint under s. 488 of the Criminal Procedure Code (Act X of 1882) falls within the cognizance of the Magistrate competent to entertain such complaint, and within the local limits of whose jurisdiction the husband or the father is actually residing at the date of such complaint. The expression "The District Magistrate, a Presidency Magistrate, a Subdivisional Magistrate, and a Magistrate of the first class" in s. 488 means the Magistrate of the particular district in which the person resides against whom such a complaint is made. *IN RE THE PETITION OF FAKRUDIN* . . . I. L. R., 9 Bom., 40

2. *Criminal Procedure Code (1882), ss. 488 and 177—Complaint by a wife against her husband for maintenance—Issue of summons—Jurisdiction of Presidency Magistrate.*—If a person neglects or refuses to maintain his wife, the proper Court to take cognizance of the complaint of the wife is the Court within the jurisdiction of which the husband resides. *BENBOW v. BENBOW* [I. L. R., 24 Cal., 638

IN THE MATTER OF THE PETITION OF BENBOW [I. C. W. N., 577

3. *Criminal Procedure Code, s. 488—Maintenance order passed on report of Subordinate Magistrate.*—Under s. 488 of the Code of Criminal Procedure, a Magistrate of the first class may, upon proof of neglect or refusal by a person having sufficient means to support his wife, order such person to make a monthly allowance for the maintenance of his wife: a first class Magistrate, having referred a complaint by a wife for maintenance to a Subordinate Magistrate to take evidence and report upon the facts stated in the petition of complainant, passed an order upon such report in the absence of the husband for payment of maintenance. *Held* that the order was illegal. *VENKATA v. PARAMMA* . . . I. L. R., 11 Mad., 199

4. *Criminal Procedure Code, s. 488—Liability of a Hindu not divided from his father to maintain his wife.*—A Hindu not divided from his father can be ordered to maintain his wife under s. 488 of the Code of Criminal Procedure. *QUEEN-EMPRESS v. RAMASAMI* [I. L. R., 13 Mad., 17

5. *Criminal Procedure Code (1882), s. 488—Illegitimate children—Right of a married woman to claim maintenance for her illegitimate children.*—A married woman is entitled, under s. 488 of the Code of Criminal Procedure (Act X of 1882), to claim maintenance for her illegitimate children from the putative father. *ROZARIO v. INGLES* . . . I. L. R., 18 Bom., 488

6. *Criminal Procedure Code (1882), s. 488—Maintenance and custody of children—Moplahs—Personal law.*—The right of children to be maintained by their actual father is a statutory right, and the duty is created by express enactment independent of the personal law of the parties. If the children are illegitimate, the refusal of the mother to surrender them to the father is no

MAINTENANCE, ORDER OF CRIMINAL COURT AS TO—*continued.*

ground for refusing maintenance. If the children are legitimate, the question of the mother's right to their custody would depend on the question whether the parties are governed by Mahomedan or Marumakkatayam law; because (1) if they are governed by Mahomedan law, the mother may have the right to custody until the children attain the age of seven years; (2) if by the Marumakkatayam law, it is doubtful if the father could be held to have neglected his duty to maintain his children if they were actually maintained by the karnavan of their mother's tarwad who is bound by law to maintain them.—*KARIYADAN POKKAR v. KAYAT BEERAN KUTTI* [I. L. R., 19 Mad., 461

7. *Criminal Procedure Code (Act V of 1899), s. 488—Usage in Malabar—Order for maintenance of child of Sambandam marriage—Marumakkatayam law as observed by Nayar community.*—The father of a child born during the continuance of the form of marriage known as sambandam, under the Marumakkatayam law as observed by the Nayar community in Malabar, is liable to have an order made against him for its maintenance under s. 488 of the Code of Criminal Procedure. *VENKATAKRISHNA PATTAR v. CHIMMUKUTTI* [I. L. R., 22 Mad., 246

AYYA PATTAR v. KALIANI AMMAL [I. L. R., 22 Mad., 247

8. *Criminal Procedure Code, s. 488—Failure to pay process-fees.*—An application for maintenance under Criminal Procedure Code, s. 488, should not be dismissed on the failure on the part of the applicant to comply with an order for payment of process-fees. *IN RE PONNAMMAL* [I. L. R., 16 Mad., 234

9. *Criminal Procedure Code, 1872, s. 536—Former application refused at another place.*—A Magistrate of the first class has, as such, power to pass an order under the provisions of s. 536 of the Code of Criminal Procedure, notwithstanding he may not be empowered to take cognizance of offences without a complaint. The petitioner, a resident of Cawnpore, was summoned to Allahabad to answer an application for the maintenance of his children. He was ordered to make them a monthly allowance. A somewhat similar application had been made at Cawnpore, which was rejected on the ground of jurisdiction. *Held* that the jurisdiction of the Magistrate who disposed of the case was not barred by the circumstance of the petitioner being resident at Cawnpore, or of the former application having been rejected. *IN THE MATTER OF THE PETITION OF TODD* [5 N. W., 237

10. *Criminal Procedure Code, s. 488—Order for maintenance of wife—Wife living apart from her husband for good cause—Jurisdiction.*—Where a wife, after a temporary absence from her husband on a visit, found on her return that he was living with another woman, and thereupon left him and went to live in a different district, and in that district applied for an order for maintenance against her husband,—*Held* that the wife

MAINTENANCE, ORDER OF CRIMINAL COURT AS TO—continued

longer liable to pay maintenance *Zed-un-nissa v Mendu Khan, Weekly Notes, All, 1885, p. 25, dissented from* *MAHBUBAN v. FAKIR BAKSH*

[I. L. R., 15 All, 143]

justify an alteration or withdrawal of the order *NE POON AUST v JURAI*

[10 B L R., Ap, 33 19 W R., Cr, 73]

30. — *Presidency Magistrate's Act (IV of 1877), s 234 235—Effect of divorce on maintenance order—A Presidency Magistrate is competent to stay an order for maintenance granted under s 234 of Act IV of 1877, and to refuse to issue his warrant under the 3rd clause of that section, and to try all questions raised before him which affect the right of a woman to receive mainten*

SAKHINA SOBHAN v SHUBRATON OSSUFF v SHAMA I. L. R., 6 Calc, 558: 5 C L. R., 21

31. — *Effect of maintenance order on right of divorce Presidency Magistrate's Act (IV of 1877), s 234—Burah Mahomedan*

forced *IN RE ABDUL ALI ISMAILJI*

[I. L. R., 7 Bom, 180]

Also so held with regard to an order under s 10 of the Police Amendment Act, XLVIII of 1860 *IN RE KASAM PIRBHAI* 8 Bom, Cr, 95

32. — *Act X of 1872 (Criminal Procedure Code), s 536—Mahomedan law—Divorce—"Iddat"—An order for the maintenance of a wife, passed under Ch XII of Act X of 1872, becomes inoperative, in the case of a*

MAINTENANCE, ORDER OF CRIMINAL COURT AS TO—continued.

Sakhina, I. L. R., 5 Calc., 558 In re Kasam Pir

DIN MUHAMMAD I. L. R., 5 All, 226

See LAHART v RAN DIAL I. L. R., 5 All, 224

33. — *Mahomedan law—Shiah school—Mutta marriage—Gift of term—Divorce—In a suit brought by a Mahomedan of the Shiah sect against his wife, belonging to the same persuasion, for a declaration that the relationship of*

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her consent, and that if under the Mahomedan law the consent was unnecessary, the Court was bound, in administering justice equity and good conscience, to

MED ABID ALI KUMAR KADAR v LUDDEN SAHARA
[I. L. R., 14 Calc, 276]

circumstances of the party paying or receiving the allowance which would justify an increase or decrease of the amount of the monthly payment originally fixed and not a charge in the status of the parties which would entail a stoppage of the allowance. So held by *AYKMAN and BLENNHURST, JJ* (*dissentiente ROX, J*) *In the matter of the petition of*

MAINTENANCE, ORDER OF CRIMINAL COURT AS TO—continued.

Complaint by a wife against her husband for maintenance.—A complaint under s. 488 of the Criminal Procedure Code (Act X of 1882) falls within the cognizance of the Magistrate competent to entertain such complaint, and within the local limits of whose jurisdiction the husband or the father is actually residing at the date of such complaint. The expression "The District Magistrate, a Presidency Magistrate, a Subdivisional Magistrate, and a Magistrate of the first class" in s. 488 means the Magistrate of the particular district in which the person resides against whom such a complaint is made. *IN RE THE PETITION OF FAKRUDIN* . . . I. L. R., 9 Bom., 40

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IN THE MATTER OF THE PETITION OF BENBOW
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[I. L. R., 13 Mad., 17

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MAINTENANCE, ORDER OF CRIMINAL COURT AS TO—continued.

ground for refusing maintenance. If the children are legitimate, the question of the mother's right to their custody would depend on the question whether the parties are governed by Mahomedan or Marumakkatayam law; because (1) if they are governed by Mahomedan law, the mother may have the right to custody until the children attain the age of seven years: (2) if by the Marumakkatayam law, it is doubtful if the father could be held to have neglected his duty to maintain his children if they were actually maintained by the karnavan of their mother's tarwad who is bound by law to maintain them.—*KARIYADAN POKKAR v. KAYAT BEERAN KUTTI*
[I. L. R., 19 Mad., 461

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[I. L. R., 22 Mad

AYYA PATTAR v. KALIANI AMMAL
[I. L. R., 22 Ma

8. *Criminal Procedure Code, s. 488—Failure to pay process-fees.*—Application for maintenance under Criminal Code, s. 488, should not be dismissed on the part of the applicant to comply with a payment of process-fees. *IN RE PONNAM*
[I. L. R., 16

9. *Criminal Procedure Code, 1872, s. 536—Former applicant at another place.*—A Magistrate of the first class, under s. 536 of the Code of Criminal Procedure, standing he may not be empowered to try offences without a complaint. The defendant of Cawnpore, was summoned to answer an application for the maintenance. He was ordered to make a return. A somewhat similar application at Cawnpore, which was rejected by the Magistrate who disposed of the application by the circumstance of the petitioner at Cawnpore, or of the former applicant. *IN THE MATTER OF THE*

10. *Criminal Procedure Code, s. 498—Order for wife living apart from her husband—Jurisdiction.*—Where a wife has been separated from her husband on a petition for divorce, and she has turned out of the house and is living with another man, and in that district applied for maintenance against her husband.

MAINTENANCE, ORDER OF CRIMINAL COURT AS TO—continued.

fact that the child has grown older might constitute a change in the circumstances calling for a variation in the rate *IN RE RAMAYEE*

[*I. L. R.*, 14 *Mad.*, 398

no power to take security for possible default
KANOO SOUDAGUR v. ALABUNDUR BEWA

[24 *W. R.*, Cr., 72

48 ——— Agreement by husband to maintain wife—*Criminal Procedure Code*, 1872 s. 336—An agreement by a husband to maintain his wife by giving her a house and jewels and by

tion *VIRAMMA v. NARAYANA*

[*I. L. R.*, 6 *Mad.*, 233

50 ——— Effect of order for maintenance—*Suit for maintenance*—S. 316 of Act XXV of 1861 is no bar to a suit by a wife against her husband for maintenance *LALLAH GOPEENATH v. JERTUN KOER*

6 *W. R.*, 57

51 ——— *Criminal Proce-*

defendant proves that the claim for maintenance has been released *RENOAMMA v. MAHAMMAD ALI*

[*I. L. R.*, 10 *Mad.*, 13

52 ——— Mode of enforcing order for accumulated arrears of maintenance—*Criminal Procedure Code*, 1872 s. 536 There is nothing in s. 536 of the *Criminal Procedure Code*, 1872 to render the levy of accumulated arrears of maintenance by a single warrant illegal *ANONYMOUS*

[7 *Mad.*, Ap., 37

MAINTENANCE, ORDER OF CRIMINAL COURT AS TO—continued.

54. ——— Mode of enforcing order—*Criminal Procedure Code*, 1869, s. 316—The issue of a warrant under s. 316 of the *Code of Criminal Procedure* is permissible for every breach of an order of maintenance made under that section, but there seems no ground for saying that a defendant can get out of his liability for any payment by the failure to issue a warrant for the levy of that payment. The result of issuing it for an aggregate of payments is that one month's imprisonment would all be backward able in default. *ANONYMOUS* 6 *Mad.*, Ap., 23

55 ——— Imprisonment for default of payment—*Criminal Procedure Code*, s. 483—*Subsequent offer to pay*—*Sentence absolute*—A sentence of imprisonment awarded under s. 483 of the *Code of Criminal Procedure* for wilful neglect to comply with an order to pay maintenance is absolute, and the defaulter is not entitled to release upon payment of the arrears due *BITACHA v. MOIDIV KUTTI*

I. L. R., 8 *Mad.*, 70

56 ——— *Criminal Procedure Code* (1882), s. 493—*Breach of order for monthly allowance*—*Sentence absolute*—*Husband and wife*—A wife, who had obtained an order for maintenance against her husband on the 1st August, applied to have it enforced with respect to three months then in arrears. A distress warrant having

his inability to pay. On that petition an order was passed that he could produce the evidence after the

for his release. The Magistrate took the money, but refused to order the release, holding that under the section the punishment of imprisonment was absolute and not dependent on payment of the maintenance.

by the action being only a mode of enforcing payment, he should have been released or the amount being paid. *Held* that the first ground was untenable, inasmuch as the order for maintenance carries with it all its proper consequences as long as it remains in force. *Held* also that, before an order for imprisonment under the section can be passed, it must be proved that the non-payment of the maintenance is the result of wilful neglect, and that there being no evidence of that in the case the order was bad. *Held* further that the imprisonment which can be awarded under the section is not a punishment for contempt of the Court's order, but merely a means

[*I. L. R.*, 4 *Mad.*, 230

MAINTENANCE, ORDER OF CRIMINAL COURT AS TO—continued.

Din Muhammad, I. L. R., 5 All., 226; Abdur Rohoman v. Sakhina, I. L. R., 5 Calc., 558; Zeb-un-nissa v. Mendu Khan, Weekly Notes, All. (1885), 29; In re Kasam Pirbhai, 8 Bom., 95; In re Abdul Ali Ismailji, I. L. R., 7 Bom., 180; Mahomed Abid Ali Kumar Kadur v. Ludden Sahiba, I. L. R., 14 Calc., 276; and Baji v. Nawab Khan, 29 Panj. Rec. 69, referred to. Nepoor Aurat v. Jurai, 10 B. L. R., Ap., 33, dissented from. Mahbubun v. Fakir Bakhs, I. L. R., 15 All., 143, overruled. ABU ILYAS v. ULFAT BINI . . . I. L. R., 18 All., 50

35. ——— Effect of decree of Civil Court on order for maintenance—*Decree in suit for restitution of conjugal rights.*—An order for maintenance ceases to have any effect after the order of a Civil Court in a suit for restitution of conjugal rights by the husband giving him a decree. *LUTFOTEE DOOMONY v. TIKHA MOODOI*

[13 W. R., Cr., 52]

36. ——— *Criminal Procedure Code (Act X of 1882), s. 488—Maintenance order obtained by a wife against husband—Subsequent decree for restitution of conjugal rights obtained by husband—Effect of such decree on previous order of maintenance.*—A decree of a Civil Court for restitution of conjugal rights supersedes any previous order of a Magistrate for maintenance, if the wife should persist in refusing to live with her husband. A Magistrate ought to cancel a previous order of maintenance made by him, or rather treat it as determined, if the wife failing to comply with the decree for restitution refuses to live with her husband. *IN RE BULAKIDAS . . . I. L. R., 23 Bom., 484*

37. ——— *Order as to paternity of child.*—The order of a Civil Court as to the paternity of a child was held to have no effect on a contrary order of the Criminal Court making the putative father, whom the order of the Civil Court had exonerated, liable for maintenance. *SUBAD DOMNI v. KATIRAM DOME . 20 W. R., Cr., 58*

38. ——— Effect of decree of Civil Court on right to apply for maintenance—*Decree of Civil Court refusing to enforce agreement for maintenance.*—A decision of the Civil Court, refusing to enforce a contract or agreement against a man for the maintenance of a woman, cannot conclude either the woman from applying, or a Magistrate from making an order, under s. 316 of the Code of Criminal Procedure, 1861, for the maintenance of their illegitimate daughter. *IN THE MATTER OF THE PETITION OF MEISLEBACH . 17 W. R., Cr., 49*

39. ——— *Criminal Procedure Code (1882), s. 488—Order for maintenance of wife, Effect on, of declaratory decree of Civil Court.*—An order for the maintenance of a wife duly made under s. 488 of the Code of Criminal Procedure cannot be superseded by a declaratory decree of a Civil Court to the effect that the wife in whose favour such order has been made has no right to maintenance. *Subad Domni v. Katiraur Dome, 20 W. R., Cr., referred to. SUBHODRA v. BASDEO DUBE . . . I. L. R., 18 All., 29*

MAINTENANCE, ORDER OF CRIMINAL COURT AS TO—continued.

40. ——— Grounds for releasing person from obligation to support illegitimate child.—The circumstance that the father of an illegitimate child is sixteen years old only, and still studying at school, is not by itself a sufficient reason for holding him excused from the necessity of providing for his illegitimate offspring. The law requires that the person on whom the order of maintenance is issued must have sufficient means to support the child. *QUEEN v. ROSHUN LALL . 4 N. W., 123*

41. ——— Willingness of husband to take charge of children on conditions—*Criminal Procedure Code (Act XXV of 1861), s. 316.*—On an application by a wife for maintenance under s. 316, Act XXV of 1861, the Magistrate held she had failed to establish her right of maintenance under that section, but he awarded maintenance to her for her two infant children, though the husband stated he was willing to take charge of them, provided they lived with him. *Held* the order was illegal. *PANCHUDAS v. SHUDEHAYI*

[8 B. L. R., Ap., 19; 16 W. R., Cr., 72]

42. ——— Order for maintenance of unborn child—*Criminal Procedure Code, 1861, s. 316.*—No order can be passed under s. 316 of the Criminal Procedure Code, 1861, for the maintenance of an unborn child. *LARLEE v. BUNSEE DITCHI*

[3 N. W., 70]

43. ——— Order with reference to husband's means—*Criminal Procedure Code, 1861, s. 317.*—The proceedings of a Magistrate awarding the payment of a certain sum of money per mensem for maintenance with reference to the means of the husband were held to be legal. If the husband is aggrieved, he ought to apply to the Magistrate under s. 317, Code of Criminal Procedure. *GOTAMONEY SURINEE v. MOHESH CHUNDER SHAHA*

[9 W. R., Cr., 1]

44. ——— Prospective order for increased maintenance as child gets older—*Criminal Procedure Code, 1861, s. 316.*—An order made under s. 316 of the Criminal Procedure Code, fixing a sum for the maintenance of a child, containing a prospective order for an increase of the amount awarded as the child grows older, is unauthorized by the law. *MUNGLO v. JUMNA DASS . 2 N. W., 454*

45. ——— Order at progressively increasing rate—*Criminal Procedure Code (Act X of 1882), ss. 488, 489.* A Magistrate has no power, under s. 488 of the Code of Criminal Procedure, to make an order for maintenance at a progressively increasing rate. He may, however, under s. 489, from time to time alter the rate of the monthly allowance granted as maintenance under s. 488. *UPENDRA NATH DHAL v. SOHAMINI DAS*

[I. L. R., 12 Calc., 535]

46. ——— *Criminal Procedure Code s. 489—Maintenance, Variation in rate of.*—A Magistrate has no power under Criminal Procedure Code, s. 489, to make an order for maintenance at progressively increasing rate, but the

MAJORITY ACT (IX OF 1875)—continued

1875, and the minor attains majority on his completing the age of eighteen years. **JOGESH CHUNDER CHUCKERBUTTY v. UMATANA DEBTA**

[3 C. L. R., 577]

2. ——— *Age of majority—Order of Court under Act XL of 1859 appointing guardian, Effect of*—In a suit in Calcutta against one of the makers of a joint promissory note executed in Calcutta on the 9th June 1877, the defendant, who was a Mahomedan, pleaded infancy. It appeared that the defendant was born on the 22nd July 1857 that, by an order of a competent Court, dated 6th November 1865, the father of the defendant was, under Act XL of 1858, appointed guardian of his property, portion of which was situated in the mofussil. Held that the effect of the order under Act XL of 1858 was to extend the minority of the defendant to the age of eighteen years, and that consequently he was a minor on the 22nd June 1875, when the Majority Act IX of 1875 came in force, and therefore under s. 3 of the latter Act his minority was further extended to the age of twenty-one years, so that on the date of the execution of the note the defendant was still a minor. **RAJ COOMAR RAY v. ALFZUDDIN AHMED**

8 C. L. R., 419

4. ——— *Guardian—Minor—Disability of infancy, its continuance—Period of minority, how affected by Act XL of 1858*—When a guardian has once been appointed to a minor under the provisions of Act XL of 1858 the disability of infancy will last till the age of twenty-one, whether the original guardian continue to act or not. **RUDRA PROKASH MISSEK v. BHOLA NATH MUKHERJEE**

[I. L. R., 12 Calc., 613]

5. ——— *Minor under Court of Wards—A "minor under the jurisdiction of the Court of Wards" means a person of whose estate the Court of Wards has actually assumed the management, not a person of whose estate the Court of Wards might with the sanction of Government take charge.* **PRHITASAMI v. SEHNADRI ATTANAGAR**

[I. L. R., 3 Mad., 11]

6. ——— *Minor—Guardian—Guardian*

MAJORITY ACT (IX OF 1875)—continued

But it is different as regards the appointment of the guardian of the person. The Act provides, in terms, for such an appointment being made, and no certificate of appointment is contemplated by the Act on the language of which it is plain that the person is being made guardian of the person and not of the property. **G. died in and inherited**

order of Court was made on the 21st March 1873, appointing the nazir of the Court administrator of the property and the plaintiff's mother in law the guardian of the person of the plaintiff but no fresh certificate of administration was granted. In 1880 the plaintiff brought the present suit against the defendants to recover from them the property left by her mother. The defendants contended (*inter alia*) that the plaintiff had attained her majority in 1874, when she was eighteen years of age, and that the plaintiff, the Indian Ma-

and that under its provisions she did not attain majority until she was twenty-one, i.e., until the year 1879, and that the present suit was therefore in time. Held that the suit was not barred by limitation. The Indian Majority Act (IX of 1875) was applicable (except so far as its operation was excluded by s. 2), inasmuch as there was a guardian of the person of the plaintiff in existence both when she arrived at the age of sixteen and also when she was eighteen, and therefore the period of minority for her was extended to twenty-one years of age. *Quære*—Whether the fact that a guardian has been at one time appointed is sufficient to bring the case within s. 3 of the Indian Majority Act (IX of 1875) so as to extend the period of minority to the age of twenty-one. The intention of the Legislature to be gathered from s. 3 would appear to be to extend minority to twenty-one years of age in cases where, at the time the minor reaches the age of eighteen, his person or property is in the hands of a guardian. **LEKNATH v. WARUSAI**

[I. L. R., 13 Bom., 293]

7. ——— *Minor—Age of majority—Guardian and Manager—Act XL of 1859, ss. 4, 7, 12—Collector—Court of Wards Act (Beng. Act IX of 1879), ss. 7-11, 20, 65*—In a suit to recover money due upon certain

his guardian and manager of his estate under Act XL of 1859, that on the 6th December, when he was nineteen years of age, his estate had been released by the Court of Wards and was made over to his father on the 17th December; that on the 30th December the District Judge held that he was still a minor, and appointed a manager

does not in terms provide for the appointment of a guardian of the person of a minor who has attained the age of majority from eighteen to twenty-one

MAINTENANCE, ORDER OF CRIMINAL COURT AS TO—continued.

of enforcing payment of the amount due, and that, upon the payment of that amount being made, the husband was entitled to be released. *Biyacha v. Moidin Kutti, I. L. R., 8 Mad., 70*, dissented from. *SIDHESWAR TEOR v. GYANADA DAS*

[I. L. R., 22 Calc., 291]

57.

Criminal Procedure Code (1882), s. 488.—The imprisonment provided by s. 488, Criminal Procedure Code, in default of payment of maintenance awarded, is not limited to one month. The maximum imprisonment that can be imposed is one month for each month's arrear, and if there is a balance representing the arrear for a portion of a month, a further term of a month's imprisonment may be imposed for such arrear. *Biyacha v. Moidin Kutti, I. L. R., 8 Mad., 70*, approved of. *ALLAPICHAIRAVUTHAR v. MOHIDIN BIBI* . . . I. L. R., 20 Mad., 3

58.

Criminal Procedure Code (Act X of 1882), s. 488—Warrant of commitment—Procedure.—An order of commitment to prison for default in payment of a wife's maintenance allowance cannot be made without proof that the non-payment was due to wilful neglect of the person ordered to pay. *Sidheswar Teor v. Gyanada Dasi, I. L. R., 22 Calc., 291*, followed. The law contemplates a single warrant of commitment in respect of the arrears due at the time of its issue. Where six months' arrears were due, an order for separate warrants of commitment awarding a separate sentence of imprisonment of one month on each warrant was therefore held to be bad in law. As to the mode of computing the term of imprisonment, the case of *Allapichai Ravuthar v. Mohidin Bibi, I. L. R., 20 Mad., 3*, followed. *BHIKU KHAN v. ZAHURAN* . . . I. L. R., 25 Calc., 291

59.

Criminal Procedure Code, s. 488—Wife—Breach of order for monthly allowance—Warrant for leaving arrears for several months—Imprisonment for allowance remaining unpaid after execution of warrant—General Clauses Consolidation Act (I of 1868), s. 2, cl. 18—"Imprisonment."—Where a claim for accumulated arrears of maintenance for several months arising under several breaches of an order for maintenance is dealt with in one proceeding, and arrears levied under a single warrant, the Magistrate acting under s. 488 of the Criminal Procedure Code has no power to pass a heavier sentence in default than one month's imprisonment, as if the warrant only related to a single breach of the order. *Per EDGE, C.J.*—S. 488 contemplates that a separate warrant should issue for each separate monthly breach of the order. *Per STRAIGHT, J.*—The third paragraph of s. 488 ought to be strictly construed, and, as far as possible, construed in favour of the subject. Under the section, a condition precedent to the infliction of a term of imprisonment is the issue of a warrant in respect of each breach of the order directing maintenance, and where, after distress has been issued, *nulla bona* is the return. The section contemplates one warrant, one punishment, and not a cumulative warrant and cumulative punishment. Also *per STRAIGHT, J.*—

MAINTENANCE, ORDER OF CRIMINAL COURT AS TO—concluded.

With reference to s. 2, cl. 18, of the General Clauses Act (I of 1868), "imprisonment" in s. 488 of the Criminal Procedure Code may be either simple or rigorous. *Per OLDFIELD, J.*—A claim for accumulated arrears of maintenance arising under several breaches of order may be dealt with in one proceeding, and arrears levied under a single warrant. *QUEEN-EM-PRESS v. NARAIN* . . . I. L. R., 9 All., 240

MAJORITY ACT (IX OF 1875).

See MAJORITY, AGE OF.

[I. L. R., 7 All., 490]

s. 2.

See MAJORITY, AGE OF.

[I. L. R., 7 All., 763]

1. ——— Minor—Mahomedan law—

Capacity to contract—Capacity to sue—Civil Procedure Code, 1877, Ch. XXXI, ss. 440-464.—S. 2 of Act IX of 1875 refers only to the capacity to contract, which is limited by s. 11 of the Contract Act, and not to the capacity to sue, which is purely a question of procedure and regulated by the Civil Procedure Code, Ch. XXXI. *PUYIKUTU ITHAYI UMAH v. KAIRHIRAPOKIL MANOD*

[I. L. R., 3 Mad., 248]

2. ——— cl. (b)—Minor, Custody of

—Guardian—Change of religion.—A Brahman boy, sixteen years of age, having left his father's house, went to and resided in the house of a missionary, where he embraced Christianity and was baptised. In a suit by the father to recover possession of his son from the missionary, — Held that the question whether the boy was a minor was to be decided, not according to Hindu law, but by Act IX of 1875; (2) that the claim was not affected by s. 2, cl. (b), of that Act; (3) and that the father was entitled to a decree that his son should be delivered into his custody. *READE v. KRISHNA* . . . I. L. R., 9 Mad., 391

ss. 2 and 3.

See PAUSIS . . . I. L. R., 22 Bom., 430

s. 3.

See ACT XL OF 1858, s. 3.

[I. L. R., 9 Calc., 901]

I. L. R., 8 Calc., 714

See LETTERS OF ADMINISTRATION.

[I. L. R., 21 Calc., 911]

See MAJORITY, AGE OF.

[I. L. R., 3 All., 598]

See MINOR—CUSTODY OF MINORS.

[I. L. R., 12 All., 213]

1. ——— Testamentary guardian obtaining probate—"Guardian appointed by Court."—Where a person who by his father's will is made guardian of his minor brother applies for and obtains probate of the will, the grant of probate only establishes the authority of his appointment. Such a guardian is not one "appointed by a Court of Justice" within the meaning of cl. 1, s. 3, Act IX of

MAJORITY, AGE OF—continued.

the meaning of s. 3, Regulation XXVI of 1793; and the minority of such a proprietor extended to the end of the eighteenth year *HURO MONES DEBIA v. TUMREZOODREN CHOWDHURY* . . . 7 W. R., 181

BEER KISHORE SUNEY SINGH v. HUR BULLUR NARAIN SINGH . . . 7 W. R., 502

6. ———— *Beng Reg. XXVI*

ected with real estate and matters of personal contract. *RYKUNINATH ROY CHOWDHURY v. POGOSH* [5 W. R., 2

7. ———— *Proprietors out of possession—Beng Reg XXVI of 1793.*—Regulation XXVI of 1793 applied to proprietors out of possession as well as to those in possession, and was not overridden by the Mahomedan law with reference to majority *ENAEY HOSSEIN v. ROSHAN JAHAN ROSHAN JAHAN v. ENAEY HOSSEIN* . . . 5 W. R., 4

the period of minority was that of eighteen years, as fixed by s. 2, Regulation XXVI of 1793 *AMEERBOONNISSA KHATOON v. ABADOONNISSA KHATOON*

[15 B. L. R., 67; 23 W. R., 208
L. R., 2 I. A., 87

8. ———— *Co-sharer—Beng Reg XXVI of 1793*—Regulation XXVI of 1793 (fixing eighteen years as the legal age for the exercise of the powers of a proprietor of an estate paying revenue to Government) applied to a co-sharer, as well as to the proprietor of an entire estate *ROSHAN JAHAN v. ENAEY HOSSEIN* . . . W. R., 1864, 83

10. ———— *Hindu—Bom Reg I of 1827, s. 7—Minor—Application for execution of decree.*

which he was no longer a minor *GANJADHAR RAGHUNATH v. CHIMPAJI KESHAV DANGLE*

[5 Bom., A. C., 95

11. ———— *Person not European Bri-*

is a minor for the purposes of Act XL of 1858, and unless he is a proprietor of an estate paying revenue to Government, who has been taken under the jurisdiction of the Court of Wards, the care of his person and the charge of his property are subject to the jurisdiction of the Civil Court; and he is a minor,

MAJORITY, AGE OF—continued.

whether proceedings have been taken for the protection of his property or the appointment of a guardian or not *MADHUSUDAN MANJI v. DESIGOBINDA NEWGI* . . . 1 B. L. R., F. B., 49

S. C. MODHOOG SOODUN MANJEE v. DABEE GOBIND NEWGARR . . . 10 W. R., F. B., 36

ABDOOL HOSSEIN v. LUTEEFOONNISSA [11 W. R., 235

12. ———— *Person subject to Act XL of 1858—Act XL of 1858, Certificate under—* When a certificate of guardianship has been granted under Act XL of 1858 it is by the terms of that Act, and not by reference to Mahomedan or Hindu law, that the period at which the ward is to be considered of full age must be determined *MAROMED ARSUD CHOWDHURY v. OOSUN BEBER*

[3 W. R., 217

13. ———— *Limit of minority.*—Discussion as to the limit of minority of Hindus (who are not proprietors paying revenue to Government) and as to the proper construction of s. 26 of Act XL of 1858. *MONSOOR ALI v. RAMDHAL* [3 W. R., 50

14. ———— *Revenue-paying*

DRU CHUCKERBUTTY . . . 3 B. L. R., Ap., 79

S. C. LUCKHER KANT DUTT v. JUGOBUNNDHO CHUCKERBUTTY . . . 11 W. R., 561

15. ———— *Jurisdiction—*

DUTT . . . 7 B. L. R., 607

16. ———— *Power to sue—Act XL of 1858, s. 3*—Where a person (a native of this country) has not attained the age of eighteen years, he is not competent to institute and maintain a suit without the intervention of a guardian appointed under s. 3 of Act XL of 1858 *NOOR AHMED v. LULTA PERSHAD* . . . 2 N. W., 180

lived the greater part of his life at Calcutta. It was not shown of what country his parents were, or whether the ship in which he was born was a British ship. The defendant pleaded minority at the time of making the vote. Held the defendant was not a European British subject, and not exempted from the operation of Act XL of 1858. She therefore attained her majority at eighteen years. *AKCHHA v. WATKINS* . . . 8 B. L. R., 373

MAJORITY, AGE OF—continued.

TALINER - PERSHAD SEIN v. DWARKANATH
BUNNET 15 W. R., 451

2. —Hindu law—

Act XL of 1858.—A Hindu, resident and domiciled in Calcutta and possessed of lands in the mofussil, borrowed in Calcutta a sum of money from the plaintiff, a professional money-lender, and agreed by his bond to repay the principal with interest at 36 per cent. per annum in Calcutta. The defendant's age, at the time he executed the bond, was sixteen years and one or two months; but neither his person nor his property had been taken charge of by the Court of Wards or by any Civil Court. The defendant having made default in payment, the plaintiff brought the present suit. The defendant pleaded his minority. *Held* by the Full Bench that the law as to the age of minority governing the case was not Act XL of 1858, but the Hindu law, under which the defendant was not a minor at the time he executed the bond, and that therefore he was liable on it. MATHOORMOHUN ROY v. SOORENDRO NARAIN DEB . I. L. R., 1 Calc., 108; 24 W. R., 494

3. —Construction of will—Executor—Grant of probate, Refusal of, to minor.—

A Hindu domiciled with his family at Serampore, in the zillah of Hooghly, died, leaving a will, in which was the following direction: "In order to look after the affairs, to conduct suits and manage the debts and dues relative to my real and personal estates, my eldest son, H C G, who has attained the age of majority, remains executor, for my younger son, G C G, is an infant; but as my eldest sister, S H D, is prudent and sensible, all the affairs of the estate shall be under her superintendence; and my eldest son shall do all the acts according to her advice and direction. But when my younger son, G C G, attains the age of majority, then both the brothers shall be equally and jointly to manage the affairs; at that time I shall have the superintendence of my said estate." G C G, after attaining the age of majority, before he had reached the age of majority, for grant of probate of his will, jointly with his brother H C G, applied to the Court for grant of probate of his will. The Court refused to grant probate to the son under the will, as the testator had not expressed his wish to the son to manage the affairs of the estate. *Held* that the Court was right in refusing to grant probate to the son under the will. PERSHAD SEIN v. DWARKANATH BUNNET . 15 W. R., 451

4. —Grant of probate, Refusal of, to minor.—

A Hindu domiciled with his family at Serampore, in the zillah of Hooghly, died, leaving a will, in which was the following direction: "In order to look after the affairs, to conduct suits and manage the debts and dues relative to my real and personal estates, my eldest son, H C G, who has attained the age of majority, remains executor, for my younger son, G C G, is an infant; but as my eldest sister, S H D, is prudent and sensible, all the affairs of the estate shall be under her superintendence; and my eldest son shall do all the acts according to her advice and direction. But when my younger son, G C G, attains the age of majority, then both the brothers shall be equally and jointly to manage the affairs; at that time I shall have the superintendence of my said estate." G C G, after attaining the age of majority, before he had reached the age of majority, for grant of probate of his will, jointly with his brother H C G, applied to the Court for grant of probate of his will. The Court refused to grant probate to the son under the will, as the testator had not expressed his wish to the son to manage the affairs of the estate. *Held* that the Court was right in refusing to grant probate to the son under the will. PERSHAD SEIN v. DWARKANATH BUNNET . 15 W. R., 451

5. —Grant of probate, Refusal of, to minor.—

A Hindu domiciled with his family at Serampore, in the zillah of Hooghly, died, leaving a will, in which was the following direction: "In order to look after the affairs, to conduct suits and manage the debts and dues relative to my real and personal estates, my eldest son, H C G, who has attained the age of majority, remains executor, for my younger son, G C G, is an infant; but as my eldest sister, S H D, is prudent and sensible, all the affairs of the estate shall be under her superintendence; and my eldest son shall do all the acts according to her advice and direction. But when my younger son, G C G, attains the age of majority, then both the brothers shall be equally and jointly to manage the affairs; at that time I shall have the superintendence of my said estate." G C G, after attaining the age of majority, before he had reached the age of majority, for grant of probate of his will, jointly with his brother H C G, applied to the Court for grant of probate of his will. The Court refused to grant probate to the son under the will, as the testator had not expressed his wish to the son to manage the affairs of the estate. *Held* that the Court was right in refusing to grant probate to the son under the will. PERSHAD SEIN v. DWARKANATH BUNNET . 15 W. R., 451

6. —Grant of probate, Refusal of, to minor.—

A Hindu domiciled with his family at Serampore, in the zillah of Hooghly, died, leaving a will, in which was the following direction: "In order to look after the affairs, to conduct suits and manage the debts and dues relative to my real and personal estates, my eldest son, H C G, who has attained the age of majority, remains executor, for my younger son, G C G, is an infant; but as my eldest sister, S H D, is prudent and sensible, all the affairs of the estate shall be under her superintendence; and my eldest son shall do all the acts according to her advice and direction. But when my younger son, G C G, attains the age of majority, then both the brothers shall be equally and jointly to manage the affairs; at that time I shall have the superintendence of my said estate." G C G, after attaining the age of majority, before he had reached the age of majority, for grant of probate of his will, jointly with his brother H C G, applied to the Court for grant of probate of his will. The Court refused to grant probate to the son under the will, as the testator had not expressed his wish to the son to manage the affairs of the estate. *Held* that the Court was right in refusing to grant probate to the son under the will. PERSHAD SEIN v. DWARKANATH BUNNET . 15 W. R., 451

7. —Grant of probate, Refusal of, to minor.—

A Hindu domiciled with his family at Serampore, in the zillah of Hooghly, died, leaving a will, in which was the following direction: "In order to look after the affairs, to conduct suits and manage the debts and dues relative to my real and personal estates, my eldest son, H C G, who has attained the age of majority, remains executor, for my younger son, G C G, is an infant; but as my eldest sister, S H D, is prudent and sensible, all the affairs of the estate shall be under her superintendence; and my eldest son shall do all the acts according to her advice and direction. But when my younger son, G C G, attains the age of majority, then both the brothers shall be equally and jointly to manage the affairs; at that time I shall have the superintendence of my said estate." G C G, after attaining the age of majority, before he had reached the age of majority, for grant of probate of his will, jointly with his brother H C G, applied to the Court for grant of probate of his will. The Court refused to grant probate to the son under the will, as the testator had not expressed his wish to the son to manage the affairs of the estate. *Held* that the Court was right in refusing to grant probate to the son under the will. PERSHAD SEIN v. DWARKANATH BUNNET . 15 W. R., 451

8. —Grant of probate, Refusal of, to minor.—

A Hindu domiciled with his family at Serampore, in the zillah of Hooghly, died, leaving a will, in which was the following direction: "In order to look after the affairs, to conduct suits and manage the debts and dues relative to my real and personal estates, my eldest son, H C G, who has attained the age of majority, remains executor, for my younger son, G C G, is an infant; but as my eldest sister, S H D, is prudent and sensible, all the affairs of the estate shall be under her superintendence; and my eldest son shall do all the acts according to her advice and direction. But when my younger son, G C G, attains the age of majority, then both the brothers shall be equally and jointly to manage the affairs; at that time I shall have the superintendence of my said estate." G C G, after attaining the age of majority, before he had reached the age of majority, for grant of probate of his will, jointly with his brother H C G, applied to the Court for grant of probate of his will. The Court refused to grant probate to the son under the will, as the testator had not expressed his wish to the son to manage the affairs of the estate. *Held* that the Court was right in refusing to grant probate to the son under the will. PERSHAD SEIN v. DWARKANATH BUNNET . 15 W. R., 451

9. —Grant of probate, Refusal of, to minor.—

A Hindu domiciled with his family at Serampore, in the zillah of Hooghly, died, leaving a will, in which was the following direction: "In order to look after the affairs, to conduct suits and manage the debts and dues relative to my real and personal estates, my eldest son, H C G, who has attained the age of majority, remains executor, for my younger son, G C G, is an infant; but as my eldest sister, S H D, is prudent and sensible, all the affairs of the estate shall be under her superintendence; and my eldest son shall do all the acts according to her advice and direction. But when my younger son, G C G, attains the age of majority, then both the brothers shall be equally and jointly to manage the affairs; at that time I shall have the superintendence of my said estate." G C G, after attaining the age of majority, before he had reached the age of majority, for grant of probate of his will, jointly with his brother H C G, applied to the Court for grant of probate of his will. The Court refused to grant probate to the son under the will, as the testator had not expressed his wish to the son to manage the affairs of the estate. *Held* that the Court was right in refusing to grant probate to the son under the will. PERSHAD SEIN v. DWARKANATH BUNNET . 15 W. R., 451

MAJORITY

OF—

APPOINTMENT.
I. L. R. 12

R., 301

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MAJORITY, AGE OF—continued.

his great grandfather and great grandmother were married, or who his grandmother was or whether his grandfather was married, that his father married a lady bearing an English name, that he himself and all his relations were Christians, that he was born in Calcutta and knew of no relatives in Europe. Held that he was the legitimate descendant of a European British subject, and therefore his age of majority was twenty one years. **ROLLO v SMITH**

[1 B L R, O C, 10]

23. ———— **Bombay Minors Act (XX of 1864)—Minor**—A Hindu to whom Act XX of 1864 (Bombay Minors Act) is not applied and who is not governed by the Majority Act, 1875, attains his majority when he attains the age of sixteen years. **SHID DESHBAY v RAMCHANDRABAY**

[1 L R, 6 Bom, 463]

24. ———— *Charge of pro-*

in **Das Kesar v Bai Ganga**, 8 Bom, A C 33. The meaning of the 1st section of Act XX of 1864, when regarded in connection with the sequel thereto (which provides for the information of the Civil Court, no such means, regarding the deaths of persons leaving infant children, as would enable the Court to

care of the persons of minors and charge of their property; and that, until the Court does so the

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castes and creeds and for all purposes. That limit is not applicable to any person until the Act be brought into play by the exercise of the Civil Court's jurisdiction. One member (although an infant) of an undivided family, governed by the Mitakshara law, has not such an interest in the joint property as is capable of being taken charge of and managed by the Civil Court or a guardian appointed under

MAJORITY, AGE OF—concluded.

Act XX of 1864. *Quare*—Whether, under Act XX of 1864, the principal Civil Court of original jurisdiction in the district can take charge of the property of a person who has completed his sixteenth year, but is under eighteen. **SHIVJI HASAM v DATU MAVJI KHOJA** 12 Bom, 281

MALABAR COMPENSATION FOR TENANTS' IMPROVEMENT ACT (MADRAS ACT I OF 1887)

See CASES UNDER LANDLORD AND TENANT
—BUILDINGS ON LAND RIGHT TO REMOVE, AND COMPENSATION FOR IMPROVEMENTS

MALABAR LAW—ADOPTION

1. ———— Adoption by the last mem-

accepted him in the Dwayamushyayana form and that the plaintiffs were entitled to a decree as prayed. **SHANKARAN v KESAVAN** 1 L R, 15 Mad, 6

2. ———— Adoption by the karnavan of a Marumakkatayam tarwad—*What is consent by the rest of the tarwad*—A tarwad in Malabar subject to Marumakkatayam law was reduced in number to two persons *vs.* the karnavan and his younger brother the plaintiff. They quarrelled, and the former without the consent of the

MALABAR LAW—CUSTODY OF CHILD.

MAJORITY, AGE OF—continued.

18. ————— *Act IX of 1875 (Majority Act), s. 3—Minor.*—A minor, of whose person or property a guardian has been appointed under Act XL of 1858, does not attain his majority when he completes the age of eighteen years, but when he completes the age of twenty-one years. *KUWAHISH ALI v. SURJU PRASAD SINGH*

[I. L. R., 3 All., 598]

19. ————— *European British subject not domiciled in India—Capacity to contract—Minor, Suit against—Civil Procedure Code, s. 443—Majority Act, IX of 1875—Lex loci—Contract Act, IX of 1872, s. 11—Cheque—Liability of indorser—Act XXVI of 1891, ss. 35, 43.*—A cheque was indorsed in blank by a European British subject who at that time was under twenty years of age and was temporarily residing, and not domiciled, in British India. It was subsequently dishonoured, and a suit was then brought by the bank which had cashed the cheque, to recover the amount from the indorser and drawer. The former alleged that the drawer had requested him to sign his name to the cheque, saying that it was a mere matter of form, and he would not be liable for the amount, and that the bank would only cash the cheque when indorsed by him; and in consequence he consented to indorse it, but that he did so without any intention of incurring liability as indorser; that he received no consideration, and that his indorsement was in blank, and not in favour of the bank, and was converted into a special indorsement without his knowledge and consent. The Court held that, at the time of indorsement, the indorser was a minor under English law, and dismissed the suit on the ground of minority. *Held* that, if the Court was satisfied of the fact of the defendant's minority, it should have complied with the provisions of s. 443 of the Civil Procedure Code. *Held* that, assuming the indorser to have been *sui juris*, the indorsement, taken in conjunction with the facts proved, established a contract by which the indorser was bound to pay the cheque. *Per STRAIGHT, Offy. C.J., and DUTHOIR, J.,* that it was by no means clear or certain that there was any rule of international law recognizing the *lex loci contractus* as governing the capacity of the person to contract, but that, assuming such a rule to be established, the specific limitation of the Majority Act (IX of 1875) to "domiciled persons" necessarily excluded its application to European British subjects not domiciled in British India; that s. 11 of the Contract Act must be interpreted as declaring that the capacity of a person in point of age to enter into a binding contract was to be determined by his own personal law, wherever such law was to be found; that this rule was not affected by the Majority Act, so far as concerned persons temporarily residing, but not domiciled in British India, whose contractual capacity was still left to be governed by the personal law of their personal domicile; and that such law in the case of European British subjects was the common law of England, which recognized twenty-one as the age of majority. *Per OLDFIELD, J.,* that by the rule of the *jus gentium*, as hitherto understood and recognized in England, the *lex loci* would govern in respect to the capacity to contract, but

MAJORITY, AGE OF—continued.

that in framing the Indian Majority Act, which was the *lex loci* on the subject in India, the Legislature would appear not to have adopted that rule, but, by limiting the operation of the Act to persons domiciled in British India, to have intentionally excluded from its operation persons not domiciled there, and to have left such persons to be governed by the law of their domicile. *Per BRODHURST, J.,* that Act IX of 1875 was intended by the Legislature to be applicable, and in fact was applicable, only to European British subjects domiciled in those parts of India referred to in s. 1, and that to any other European British subject whose domicile was in England, but who was temporarily residing in any part of India above alluded to, the privileges and disabilities of minority attached until he had attained the age of twenty-one years. *ROHILKHAND AND KUMAON BANK v. ROW* . . . I. L. R., 7 All., 490

20. ————— *Mahomedan over sixteen years of age before Act IX of 1875 came into force—Capacity to contract—Mahomedan law—Act IX of 1872 (Contract Act), s. 11—Act XL of 1858 (Bengal Minors Act), s. 26—Act IX of 1875 (Majority Act), s. 2 (c).*—In a suit upon a bond executed on the 5th June 1875 by a Mahomedan who at that date was sixteen years and nine months old, the defendant pleaded that at the time when the bond was executed he was a minor, and that the agreement was therefore not enforceable as against him. *Held* that the defendant, having at the date of the execution of the bond reached the full age of sixteen years, and so attained majority under the Mahomedan law, which, and not the rule contained in s. 26 of the Bengal Minors Act (XL of 1858), was the law applicable to him under s. 2 (c) of the Majority Act (IX of 1875) before the latter Act came into force, was competent in respect of age to make a contract in the sense of s. 11 of the Contract Act (IX of 1872), and the agreement was therefore enforceable as against him. The rule contained in s. 26 of the Bengal Minors Act is limited by its terms to "the purposes of that Act," which provides exclusively for the care of the persons and property of minors possessed of property which has not been taken under the protection of the Court of Wards; and it is to such persons only, when they have been brought under the operation of the Act as in it provided, that the prolongation of nonage under s. 26 applies. *DAMODAR DASS v. WILAYET HUSAIN*

[I. L. R., 7 All., 763]

21. ————— *European British subject—Law governing capacity to contract.*—The *lex loci contractus* determines the capacity of a person to contract, and reference ought not to be made to the law of his domicile of origin. The privileges and disabilities of minority, so far as they are not removed by express enactment, attach to European British subjects in this country until they have attained the age of twenty-one years. The same rule ought, on principles of justice, equity, and good conscience, to be observed in the Non-Regulation as in the Regulation Provinces. *HEARSEY v. GIRDHAREE LAL* . . . 3 N. W., 338

MALABAR LAW—ENDOWMENT*—continued.*

plaintiff No 1, a Nambudri Brahman, was a member, the defendants represented the family which formerly ruled over the tract of country where the devaswam was situated. The plaintiffs sued for a declaration that their families were entitled to the exclusive management of the affairs of the devaswam. It appeared that the plaintiffs and defendants' families had been in joint management since 1845 in accordance with the provisions of a deed of compromise. *Held*, (1) on its appearing that the compromise had been entered into by the karnavan of the plaintiffs' ilom, and that the compromise was not vitiated by fraud or the like, that the compromise was binding on the plaintiff, (2) that the claim to exclusive management was barred by limitation. A legal origin to which the joint enjoyment of the rights of management may be referred may be found in the continuance of what was melkonnas in ancient times as a trusteeship subsequent to the British rule with the tacit sanction of the British Government, or in the status of the Nambudi family as patrons of the institution. **NILAKANDAN v. PADMANABHA**

[I L R., 14 Mad., 153]

Held on appeal to the Privy Council affirming the**FAD v. PADMANABHA REVI VARMA**

[I L R., 18 Mad., 1]

I L R., 21 I A, 128

4 — — — **Alienation of endowed property—Sale of joint property—Urulans of devaswam—Sale by one tarwad without consent of others**—When the urulans of a devaswam were four tarwads, *Held* that a sale of the urulans right by one tarwad without the consent of the others was altogether invalid, and that the vendee could not redeem a kyanam mortgage of the devaswam land, though the mortgagor was karnavan of the tarwad which assumed to sell the urulans right. **UKANDA VARIYAR v. RAMAN NAMBUDIRI** 1 Mad., 282

5 — — — **Transfer of right to manage temple—Lease**—A transfer of the right to manage a Malabar temple and its lands by way of lease for a sum of money is illegal. **RAMA VARMA TAMBARAN v. RAMAN NAYAR** I L R., 5 Mad., 89

6 — — — **Alienation—Custom**—The founder of a Hindu temple who provides that the urulans (trustees or managers) thereof for the time being shall be the karnavans (chiefs)

its duties, with all the trust property, to a person unconnected with the families from which the

MALABAR LAW—ENDOWMENT*—concluded*

trustees were to be taken, to be used according to his discretion. There is no authority under the general principles of Hindu law for holding that such trustees have power to make such a transfer. Where a custom relied on as sanctioning such a transfer implies the right to sell the trusteeship for the pecuniary advantage of the trustees that circumstance alone may justify a decision that the custom relied on is bad in law. Where, from the absence of direct evidence of the nature of a Hindu religious foundation and the rights, duties, and powers of the trustees it becomes necessary to refer to usage, the custom to be proved must be one which regulates the particular institution. The cases of *Greedharoo Dass v. Nundo Kishore Dass*, 11 Moore's I A., 405, and *Rajah Mutla Ramalinga Setupati v. Perianayagam Pillai*, L R., 11 I A., 205, referred to and approved. **VARMA VALIA v. RAVI VARMA** I L R., 1 Mad., 235

[I L R., 4 I A., 78]

Affirming decision of High Court in **VARMA VALIA (RAJAH OF CHERAKOT KOVILAGAM) v. KOTTAYATH KITYAKI KOVILAGATH REVI VARMA MOOTHA RAJAH** 7 Mad., 210

See **GNANASAMBANDA PANDARA SANNADHI v. VELU PANDARAM** I L R., 23 Mad., 271

7 — — — **Rights of Sthanamdars**—Rights of members of a sthanam *inter se* considered. **MAHOMED v. KRISHNAN** I L R., 11 Mad., 106

8 — — — **Alienability of "sthanam" lands—Payment of debt**—Lands attached to the

of the sthanam. **CHEMMINIKARA MUPPIL NAIR v. KUNIVAN UKONA MENON** I L R., 1 Mad., 88

See **VENKATESWARA IYAN v. SHAKHARI VARMA** [I L R., 3 Mad., 384 I L R., 8 I A., 143]

9 — — — **Grant of perpetual lease**—The grant of a perpetual lease at a fixed rent is not necessarily beyond the powers of a sthanam holder in a Malabar royal family. **MANA VIKRAMAN v. SUNDARAY PATTAR**

[I L R., 4 Mad., 148]

10 — — — **Powers of sthanam**—Lease by sthanam of forest land attached to the sthanam—A sthanam in Malabar is not a tenant for life impeachable for waste. He is a person who represents the estate for the time being and it is open to him to make a lease of forest land for a term of years, and the mere fact that the alienation is intended to hold good after his lifetime will not invalidate it. **ITTIBARICHAN UNNI v. KUNJESSU**

[I L R., 21 Mad., 144]

MALABAR LAW—GIFT.

MALABAR LAW—CUSTODY OF CHILD—concluded.

guardianship of their father. *Held* by the High Court on appeal that the order should be reversed on the grounds that no case had arisen for the exercise of the Civil Judge's power, and that the order was wholly opposed to the very principle upon which Marumakkattayam depends. **THATHU BAPUTTY v. CHAKAYATH CHATHU** . . . 7 Mad., 179

MALABAR LAW—CUSTOM.

See MALABAR LAW—INHERITANCE.

[I. L. R., 15 Mad., 281]

1. ———— **Nambudri Brahmans—Proof—Adoption of sister's son.**—A Division Bench of the High Court having directed an issue to be tried by the Subordinate Judge of North Malabar as to whether, by the custom of Malabar, the adoption of a sister's son among Nambudri Brahmans was valid, the Subordinate Judge examined eleven witnesses selected by the parties to the suit all of whom were described as Nambudris of note in both districts of North and South Malabar. These witnesses (with the exception of one whose testimony was self-contradictory) agreed that the adoption of a daughter's or sister's son is recognized by the customary law of Malabar, and supported their opinion by giving instances of such adoption which had taken place within their knowledge, and named the persons alleged to have been adopted in pursuance of the custom as holding estates by virtue of the title thereby acquired. The Division Bench referred to a Full Bench the question whether the evidence sufficiently established the custom alleged. *Held* by the Full Bench (**TURNER, C.J., INNES, KINDERSLEY, and MUTTUSAMI AYYAR, JJ.**) that the evidence was sufficient to establish that the adoption of a sister's son by Nambudri Brahmans is sanctioned by the customary law of Malabar. (*Per TURNER, C.J., and KINDERSLEY, J.*) *Semle*—The ruling in **Gopalayyan v. Ragupathi Ayyan**, 7 Mad., 250, as to that constitutes sufficient proof of custom, has been too strongly expressed. **ERANJOLI ILLATH VISHNU NAMBUDEI v. ERANJOLI ILLATH KRISHNAN NAMBUDEI** . . . I. L. R., 7 Mad., 3

2. ———— **Nambudris—Introduction of stranger to perpetuate existence of illam.**—According to the custom prevailing amongst Nambudris in Malabar, a person may be introduced into an illam (family) to perpetuate its existence. Such person thereupon becomes a member of the illam, and is *prima facie* entitled to exercise the uraima, rights of the illam (*i.e.*, to act as trustee of temples, the hereditary trusteeship of which is vested in the illam), as well as to enjoy the properties belonging to the illam. **KESHAVAN v. VASUDEVAN**

[I. L. R., 7 Mad., 297]

3. ———— **Custom in family of the Zamorin Rajas of Calicut—Presumption as to property in possession of member of family.**—According to the custom obtaining in the family of the Zamorin Rajas of Calicut, property acquired by a stanom-holder and not merged by him in the property of his stanom, or otherwise disposed of by him

MALABAR LAW—CUSTOM—concluded.

in his lifetime, becomes, on his death, the property of the kovilagam in which he was born, and, if found in the possession of a member of the kovilagam, belongs presumably to the kovilagam as common property. **VIRA RAYEN v. VALIA RANI**

[I. L. R., 3 Mad., 141]

4. ———— **Qualification of yajaman or manager of the family—Leprosy—Adoption of another person without consent of son who was a leper.**—The last female member of an Aliyasantana family made an adoption without the consent of her son, who was suffering from the ulcerous leprosy, which was not congenital. *Held* that there was no custom excluding lepers either from management of the family or from inheritance, and that the son was entitled to have the adoption set aside. **CHANDU v. SUBBA** . I. L. R., 13 Mad., 209

5. ———— **Custom of Mapillas—Co-parcenary.**—There is no authority for saying that the custom of holding property in co-parcenary is a recognized custom among Mapillas in Malabar. **KASMI v. AYISHAMMA** . . . I. L. R., 15 Mad., 60

MALABAR LAW—DEBTS.

——— **Hindu Law how far applicable—Brahmans—Nambudris—Mussads—Liability of sons for father's debt in Hindu law not applicable.**—The principle of Hindu law, which imposes a duty on a son to pay his father's debt, contracted for purposes neither illegal nor immoral, is not applicable to the Malabar Brahmans called Nambudris and Mussads. **NILAKANDAN v. MADHAVAN**

[I. L. R., 10 Mad., 9]

MALABAR LAW—ENDOWMENT.

See PARTIES—ADDING PARTIES TO SUITS

——— **PLAINTIFFS** I. L. R., 10 Mad., 322

[I. L. R., 14 Mad., 489]

1. ———— **Uralans—Agreement to increase number of uralans (trustees)—Binding effect of, on minority.**—An agreement by the majority of the uralans (trustees) of a Malabar devaswam (temple) to increase the number of uralans is not binding on a dissentient minority. **NARAYANAN v. SRIDHARAN**

[I. L. R., 5 Mad., 165]

2. ———— **Trust management—Power of majority.**—Where the majority of the uralans of a Malabar devaswam agreed to renew a kanam on terms beneficial to the devaswam after the question of the renewal had been fairly considered by all the uralans, *Held* that the decision of the majority was binding upon a dissentient minority. **CHARAVUR TERAMATH v. URATH LAKSHMI**

[I. L. R., 6 Mad., 270]

3. ———— **Uraima or rights of uralan—Melkoima—Effect of compromise by uralers of the right to manage a devaswam—Claim of certain uralers to exclude others from management—Limitation.**—The uraima right in a Malabar devaswam was vested in the illim, of which

MALABAR LAW-GIFT—continued.

See Malabar Law—Gift—continued.

RECOGNITION OF MARRIAGE

See Malabar Law—Marriage—continued.

MALABAR LAW—MARRIAGE

See Malabar Law—Marriage—continued.

MALABAR LAW—MARRIAGE

See Malabar Law—Marriage—continued.

MALABAR LAW—MARRIAGE

See Malabar Law—Marriage—continued.

MALABAR LAW—MARRIAGE

See Malabar Law—Marriage—continued.

MALABAR LAW—MARRIAGE

See Malabar Law—Marriage—continued.

MALABAR LAW—MARRIAGE

See Malabar Law—Marriage—continued.

MALABAR LAW—MARRIAGE

See Malabar Law—Marriage—continued.

MALABAR LAW—MARRIAGE

See Malabar Law—Marriage—continued.

See Malabar Law—Marriage—continued.

MALABAR LAW—CUSTODY OF CHILD—concluded.

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See MALABAR LAW—INHERITANCE.

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MALABAR LAW—CUSTOM—concluded.

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[I. L. R., 10 Mad., 8]

MALABAR LAW—ENDOWMENT.

See PARTIES—ADDING PARTIES TO SUITS

—PLAINTIFFS I. L. R., 10 Mad., 322

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MALABAR LAW-JOINT FAMILY

MALABAR LAW-JOINT FAMILY

7. Right of member of tarwad to an account.—Right to succeed to management of family property. An individual member of a tarwad governed by the Marumakkathayam rule has no right to an account from the tarwad. Each member of a tarwad has a right to succeed to the management of the family property. *—continued.*

8. Right to manage homestead.—Right of the eldest member of a family to manage the homestead. The homestead is a family property and the right to manage it is a right of the family. *—continued.*

9. Right to manage tarwad.—Right to manage a tarwad. A tarwad is a family property and the right to manage it is a right of the family. *—continued.*

10. Power of karnavan to renounce privilege and duties of office.—A karnavan cannot put his contract so as to enable him to renounce the privilege and duties which attach to his position as karnavan. *—continued.*

11. Powers of karnavan.—Duties of karnavan to his son.—The duties of a karnavan to his son are to maintain him, to educate him, and to provide for his future. *—continued.*

12. Alienation of joint family property.—Signature of karnavan as evidence of joint family property. According to Malabar law, a signature of a karnavan is not evidence of joint family property. *—continued.*

13. Power of karnavan.—The agent of the karnavan is necessary to a sale of tarwad land by a karnavan. The chief mandary's signature to the instrument of sale is sufficient, but not indispensable, evidence of such agent. *—continued.*

14. Purchase.—It is the unquestionable law of Malabar that tarwad property is inalienable, except in cases of adequate family necessity. In such cases of

17. Powers of karnavan.—The karnavan of a tarwad has the right to alienate the tarwad property. *—continued.*

18. Position of karnavan.—A karnavan is not a trustee. The position of a karnavan is not analogous to that of a mere trustee, officer of a corporation, or the like. The person to whom the karnavan bears the closest resemblance is the father of a Hindu family. He should not be removed from his position except on the most cogent grounds. The solution of the difficulties which the state of families and property in Malabar will always create will not be assisted by bringing in the analogy and insecurity which will always follow upon any attempt to weaken the natural authority of the karnavan. *—continued.*

19. The position of a karnavan is not analogous to that of a mere trustee, officer of a corporation, or the like. The person to whom the karnavan bears the closest resemblance is the father of a Hindu family. He should not be removed from his position except on the most cogent grounds. The solution of the difficulties which the state of families and property in Malabar will always create will not be assisted by bringing in the analogy and insecurity which will always follow upon any attempt to weaken the natural authority of the karnavan. *—continued.*

20. Power of karnavan.—In Hindu family distinguished. A Court has no power to interfere with the power of a karnavan. *—continued.*

MALABAR LAW-INHERITANCE

estate created by the gift. However, as respects

Exclusion from inheritance

was not congenial. She sued, by the Collector of

7. ————— Maklakayam rule of inheritance—Custom of Tiyagan in South Malabar — A community, following the Maklakayam rule, must not be taken to be necessarily governed by the Hindu law of inheritance with all its incidents. Accord- ingly, when a member of the Tiyagan community in- herited, following that rule, a landed and mortgag- ed property, the following rule was applied:

Malabar—On the death of a Tyan of South
Tians of South
Bar, following the Makkatgam rule of inheritance,
his mother, widow, and daughter were entitled to suc-
ceed to his common property by testament and suc-

Calicut — Widow — Mother — Among the Thiruvans
Thayavan of
Calicut governed by the Malabar law, the widow
of the deceased owner is a preponderant heir to his
mother against persons of Calicut.
P. I. R., 19 Mad., 440.

MAHABAR LAW-JOINT FAMILY.
See RIGHT OF SURVIVORSHIP TO ESTATE.
1. "Paternal" Succession—Tara's
—In Mahabhar the word "Mahabhar" has several distinct
meanings in the families of the princes all the
branches have separate monarchs, and the senior in age

tion may be regarded as rather due to public opinion being devoted to it. This mode of succession is not, however, the same as the one adopted by the royal family, but there is no doubt that the same principle is at work in both cases. The royal family is not a family in the ordinary sense of the word, but a family in the sense of the law. The royal family is a family in the sense of the law, but there is no doubt that the same principle is at work in both cases. The royal family is not a family in the ordinary sense of the word, but a family in the sense of the law. The royal family is a family in the sense of the law, but there is no doubt that the same principle is at work in both cases.

MALABAR LAW-JOINT FAMILY

MALABAR LAW-JOINT FAMILY

—continued.

2—continued.

Karnavan and senior female member of a talwad

Evidence of intention to sue defendants as representatives of the talwad.—The karnavan and senior female member of a talwad asked for being the joint of a devassam were sold in execution of a decree obtained by defendant No. 1 against the urnans. Plaintiffs, being the amandans of the urnans, sued to set aside the sale, alleging that the debt was not contracted for devassam purposes, and that the decree was collusive. *Held* that the decree was binding on the plaintiffs unless it had been obtained by fraud and collusion. *Kritu v. Pareru*.

29. *Suit by amandans*

to set aside a sale in execution of decree against their karnavan, when maintainable.—The lands

executed for being the joint of a devassam were sold in execution of a decree obtained by defendant No. 1 against the urnans. Plaintiffs, being the amandans of the urnans, sued to set aside the sale, alleging that the debt was not contracted for devassam purposes, and that the decree was collusive. *Held* that the decree was binding on the plaintiffs unless it had been obtained by fraud and collusion. *Kritu v. Pareru*.

30. *Suit to set aside*

decree and recover lands sold under it.—In suits by a branch karnavan of a Malabar talwad to recover certain lands belonging to his branch talwad, which had been mortgaged by a former branch karnavan, the plea was that the plaintiff had no right to sue without the authority of the senior member of the family, the vella karnam. Upon an issue sent down (in special appeal) by the High Court, it was found by the Civil Judge that there was no binding and peculiar custom in the family depriving the senior member of all management of the property, and vesting it in the branch karnavans. Upon the final hearing it was contended that the contrary had been so irrevocably fixed by judicial decision as to prevent the matter from being open to question, and that this finding was bad in law, as being opposed to binding decrees of competent Courts. *Held* by HOLROYD, J., (1) that there was nothing compelling the Court to decide, contrary to the plain rules of law, that this delegation was irrevocable; that perhaps it was by his successors; (2) that the fact of the setting apart of santham property, if it was set apart, can make no difference, and as little can the circumstance of the income reserved; (3) that there was nothing to prevent the Court from deciding that the Civil Judge was right in saying that this was an ordinary Malabar talwad; and (4) that the revocation before the Sudder Court was not even irrevocable as against him who made it, and certainly could not have the effect of depriving the senior member, for all future time, of the rights which the law of the country conferred upon him, with the correlative duties upon his becoming senior. By *SCOTTAM, C.J.*—That the Court was not constrained to hold that the irrevocability of the arrangement effected in 966 by the former head of the family, as to the apportionment of the family property between two talvans, and the management of each talvans' allotment by its senior member, was a matter conclusively adjudicated in the course of the litigation, of which there was proof in the records; that such arrangement operated only as a personal renunciation and delegation of the rights of management possessed by the then head of the talwad; and that, assuming it to have been irrevocable by him, it was not binding on the third defendant, admittedly the head of the family, by right of seniority. *APPEAL allowed.* *ATKINSON, RAYAN KUTARAN v. ATKINSON, EKANATHA THAYAL VARIEKAVAN 6 Mad., 401*

31. *Suit against karnavan and senior female member of a talwad*

Evidence of intention to sue defendants as representatives of the talwad.—The karnavan and senior female member of a Malabar talwad executed a hypothecation-bond, on which a suit was brought against them asking for the sale of the talwad property. The defendants had represented the talwad in other suits, but were not in this case expressly named in a representative capacity. The plaintiff obtained a decree. *Held* that the decree was binding on the talwad. *SUBRAMANYAN v. KATI*

32. *A sued for possession of certain shops belonging to a Malabar talwad*

which had been attached in execution of a personal decree passed against a karnavan in a suit on a private debt. In the execution-proceedings an objection was put in, stating that the shops were attached to the defendants otherwise than by their individual names; but the plaintiff's claim was, *inter alia*, in respect of the breach of a contract by the defendants to put him into possession of certain land which was expressed to be "the joint of the land and the execution-sale did not bind the talwad, and the execution-sale did not bind the talwad. *Davlat Ram v. Mether Chaud, I. L. R., 15 Cal., 70.*

33. *Representatives of talwad.*—The karnavan and an amandavan of a Malabar talwad were authorized by a karnavan to manage the affairs of the talwad. A decree was obtained against them, and land belonging to the talwad was attached and sold in execution. The plaintiff did not describe the defendants otherwise than by their individual names; but the plaintiff's claim was, *inter alia*, in respect of the breach of a contract by the defendants to put him into possession of certain land which was expressed to be "the joint of the land and the execution-sale did not bind the talwad, and the execution-sale did not bind the talwad. *Davlat Ram v. Mether Chaud, I. L. R., 15 Cal., 70.*

34. *A junior member of a talwad*

in execution of decree.—A junior member of a talwad was held out as the manager and *de facto* karnavan, contracted a debt for the purposes of the talwad. The creditor sued him on the debt, but did not implead him as karnavan, and having obtained a personal decree, attached and brought to sale in execution property belonging to the talwad. A son of the judgment-debtor now sued to set aside the sale. *Held* that the sale should be set aside. *GOVINDA v. KRISHNAN I. L. R., 15 Mad., 333*

35. *Decree for maintenance against karnavan.*—Execution against talwad property.

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25. **Karnavan, Decree against**

Execution against tawad property—

Right of purchaser—Res judicata—Right of junior

member of tawad not impeded to contest sales of

tawad property in execution of decree against

Karnavan sued as such—When the Karnavan of a

Malabar tawad has not been implicated as such in

a suit, and there is nothing on the face of the pro-

ceedings to show that it was intended to implead

him in his representative character, tawad property

cannot be attached and sold in execution of the

decree, even though it is proved that the decree was

obtained for a debt binding on the tawad. Although

the party of a tawad may be attached and sold

in execution of a decree when the tawad is sued

as representative of the tawad, members of the

tawad who are not parties to the proceedings and

have not been represented in the manner prescribed

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are sanctioned by usage. If such powers are inordi-

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their estates, or if they are so limited as to interfere

obstacles to the establishment of new industries, the

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Karnavan used as such—When the Karnavan of a

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MALABAR LAW-JOINT FAMILY

—continued.

44.

Karnatan binding on tarwad—Parties.—A decree in a suit in which the karnatan of a Nambradi Ilom or a Marumakkathayam tarwad is, in his representative capacity, joined as a defendant, and which he honestly acquiesces in, is binding on the other members of the family not actually made parties. *Vasudevan v. Sankaran*. I. L. R., 20 Mad., 129.

45.

Effect of decree against karnatan representing the tarwad—Res judicata—Civil Procedure Code (1882), ss. 13 and 30.—Although the members of a tarwad or family may, in an irregular fashion, be represented by a karnatan of the tarwad in a suit, the decree therein does not raise an absolute estoppel against members not actually brought on the record. *Illachan v. Vellappan*, I. L. R., 8 Mad., 484, and *Sri Devi v. Keli Bradu*, I. L. R., 10 Mad., 79, followed. *Kovayyan Nambar v. Ukkaran Nambar*. I. L. R., 17 Mad., 214.

46.

Of Marpillas—Mutifariousness—Suit by karnatan

Decree against

of Marpillas—Mutifariousness—Suit by karnatan

of Marpillas—Mutifariousness—Suit by karnatan

of Marpillas—Mutifariousness—Suit by karnatan

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of Marpillas—Mutifariousness—Suit by karnatan

MALABAR LAW-JOINT FAMILY

—continued.

Adverse possession—Limitation.—In 1851 the

claimant of an Allysantam family mortgaged family

property to the ancestor of some of the defendants

who and whose aliases were now in possession. The

mortgagor died leaving, besides one brother, two sis-

ters, each having a son—the family remaining un-

divided. In 1856 one of the sons, with the con-

currence of his uncle and mother, conveyed the land

to the mortgagor, but this transaction was not jus-

ified by any family necessity; and in 1857 the other

son and his mother sold their undivided moiety to the

plaintiff's predecessor in title. In a suit to redeem

the mortgage of 1851, the plaintiff obtained a decree

for redemption of a moiety of the mortgaged pro-

perty. *Held* that, although it may have been sup-

posed in 1857 that compulsory partition was permit-

ted by the Allysantam law, yet as the right to the

plaintiff's share purported to be sold in 1857 had no legal

existence, nothing could pass by that sale, and the

suit should be dismissed. Neither the original mort-

gage nor his son could rely on the twelve years' rule

of limitation unless he could prove a subsequent valid

sale, in the absence of which his possession must be

taken to retain its original character. *Byram v. Per-*

namba. I. L. R., 14 Mad., 38.

Decree against

of Marpillas—Mutifariousness—Suit by karnatan

of Marpillas—Mutifariousness—Suit by karnatan

of Marpillas—Mutifariousness—Suit by karnatan

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of Marpillas—Mutifariousness—Suit by karnatan

of Marpillas—Mutifariousness—Suit by karnatan

—continued

entitled to execute the decree against farward property.—*Held*—That the plaintiff was entitled to execute the decree against the farward property.

CHANDU v. RAMAK I. L. R., 11 Mad., 378

36 *Decree against farward and senior annandason not binding on junior members*—*Civil Procedure Code, s. 13, exp. 5.*

* 30—A decree having been obtained against the farward and senior annandason of a Malabar farward

whereby the farward was disposed of certain land, the junior members of the farward who had not been

impleded in the suit and to recover the land.

Held that the plaintiffs were entitled to recover upon proof that the decree in the former suit was not substantially correct, and that they were found to prove material

fact on the part of their farward in defending the former suit as a condition precedent to recover

CHANDU v. RAMAK I. L. R., 10 Mad., 79

37. *Female manager of a farward—Res judicata*—The senior female member of a Malabar farward, who

managed its affairs instituted a suit on behalf of the farward and in the capacity of farward *Held* (1)

that a female is not precluded from managing the affairs of her farward when there is no male member

in her family capable of performing the duties of a farward, and (2) that the junior members of the

farward were, in the absence of fraud and collusion, conclusively parties to the suit, and were accordingly

bound by the decree *SUBRAMANYA v. GOPIAL* I. L. R., 10 Mad., 233

38. *Res judicata—Declaratory suit*—With

drawal of part of claim—A and B, junior members of a Malabar farward, sued to cancel certain

mortgages executed by their farward and senior annandason, on the ground that the secured debt

was not binding on the farward, and to appoint a manager to the office of farward. The last part of the prayer

was withdrawn. The mortgages were executed to

members of a farward—*Suit for retention of Malabar*

Kormoran Right of suit—In a suit brought by a

subordinate Court by the junior members of a Malabar

—continued

Court, whereby certain lands of the decessant were

were entitled to maintain the suit without proof of

fraud and collusion on the part of their farward in

the previous suit, and that they were entitled to the

decree as prayed. *APPEAL* I. L. R., 14 Mad., 425

40 *Former decrees against farward—Civil Procedure Code, s. 13—*

Limitation Act (XV of 1877), s. 11 *or s. 91.*

1901 v. Res judicata—In a suit for recovery of

other than the farward and a member of the farward

farward had been adopted into the farward and that subsequently that illon and the plain-

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MALABAR LAW-JOINT FAMILY

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After occupying the office of karnavan for some years *Melid* that the defendant was not a fit person to be the karnavan of a town and should be removed from his office KARNAR & LUNDAY
[L. I. R., 12 Mad., 307]

ALL INFORMATION CONTAINED
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52 ————— Karmaran Dis

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LT. L. R., 15 Mad, 483

MALABAR LAW-MAINTENANCE.

Right to maintenance—*Law*
Sembie—An individual has a right to main-
 tenance is merely a right to be maintained in the
 family house *Ky. 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 9*

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[L. R., 3 May, 1986]

—m d a n s j u d e y

IDENTIFYING INFORMATION
[I. I. R. 4 Mod. 171]

_____ Suit by member of _____

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MALABAR LAW-JOINT FAMILY

—confused—

Point remanded the case for the trial of a general issue as to the mode of devolution of self acquired property in Marumathaviam Vayilla families in 27th

U L R, 17 Mad, 69

48 ————— Removal of Karnavan from

1. SAEQUIN 2. HCH 3. — 4. 2,4-D 5. 40% PHOSPH 6. — 7. — 8. — 9. — 10. —

from his office this conduct was not in his position and that he could not be retained in his position without serious risk to the interests of the family.

153, 124, 113, 102, 91, 80, 69, 58, 47, 36, 25, 14, 3, 1
 153, 124, 113, 102, 91, 80, 69, 58, 47, 36, 25, 14, 3, 1

49 ————— Grounds for re-moral—Award properly—Favors of karnatan

Mad, 153 approved DONOKHILAT PARABHATV
KCHAMOD HAGEE & DONAKHILAT PARABHATV
KCHILAT HAGEE TOP & DONAKHILAT PANA
LEATV KCHAMOD HAGEE
L T P 3 Mad 153

— Suit to remove a

Singapore

19

8. Proof of malice or

9. _____
 P. Agra, 38

10. Malice—Want of reasonable and probable cause. An action for

In an action for malicious prosecution, it is for the plaintiff to prove the existence of malice and want

S. C. GOUR HUREE DOSS v. HYAGRIE DOSS
[14 W. R., 425]

12. Action for damages for malicious prosecution.

13. [6 B. L. R., 377 note; 12 W. R., 402] Proof of reason.

show that he had reasonable and sufficient cause for making the charge; and on his failure to show

S. C. BISHONATH BUKHIT & RAM DHONE SINGAR

reasonable cause—inference of malice.—In a suit for a malicious prosecution, the plaintiff is entitled

and without reasonable and probable cause; and if want of reasonable and probable cause be shown

and the defendant was not a member of the plaintiff's family.

16. _____ Suit against
person whose name was not on record of prosecution

iff would give rise to the inference of malice. Rai
TUNG BAHADUR v. Rai GODDAB SAHOY

ad been convicted by the Sessions of

erty, plaintiff could not recover damages, unless
was certain that the property in question was not

act that a person has been found innocent of the charge made against him is not sufficient to entitle

that there was no reasonable or probable cause for

19. Absence of prob-

against the plaintiff was unfounded, and that it was

necessarily malicious. From proof of the absence of such cause as would influence a man of ordinary caution, malice may be presumed, but this is an inference which it is optional with the Court and not compulsion on it to draw and it may be rebutted by proof of good faith. When the persons against whom malice is to be proved are not themselves present, but act through agents at a distance, the inference of malice should not be drawn from the mere proof of the absence of reasonable cause.

GOTTREK & ROBERTS 2 N W, 363

2. Suit for damages for malicious attachment—Reasonable and probable cause.—In an action for damages for a malicious

MALICIOUS PROSECUTION

See ABATMENT OF SUIT—SUITS
[1 L. R., 13 Bom., 677

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—SUBSTANTIAL QUESTION OF LAW
[1 L. R., 25 Bom., 332

4 C W N, 781

See JURISDICTION—CASES OF JURISDICTION—CASES OF ACTIOVS—MALICIOUS PROSECUTION
6 B L R., 141

See MADRAS LOCAL BOARDS ACT & 123
[1 L. R., 13 Mad., 442
See SHALU CARRER COURT, JURISDICTION—DAMAGES
[3 Mad., 254
1 L. R., 14 Bom., 100

See SCHODWARTZ JUDGE, JURISDICTION
1 L. R., 11 Bom., 370
[1 L. R., 13 Bom., 368

1. Right to sue—Trespasser criminal prosecutions—Difference under & 211, Penal Code for an offence under & 211, Penal Code (false

.. .. .

2. Reasonable and

prosecution as matters are relevant to maintain an action for malice as proved in & 211 & 212 & 213

3. Liability for mere

bond, *vide* criminal prosecution—A comp. plaintiff who put the criminal law in motion against a person not being malicious or groundless should not be held civilly responsible for any injury or loss thereby sustained by the person prosecuted. *vide* *Pratt v. Pratt*

[1 N W, Pt II, p 11 Ed 1873, 71

Application for

sanction to prosecute—Criminal Procedure Code, & 155—Cause of action—Held that an unsuccessful application under & 150 of the Criminal Procedure Code for sanction to prosecute for offences under the Penal Code, in which the only loss or injury

in an action for recovery of damages on account of malicious prosecution. *Pratt v. Pratt* & *Pratt v. Pratt*

Necessary evidence—Reasonable and

able cause. Proof of want of in an action for damages

denial in the Civil Court. *Pratt v. Pratt* & *Pratt v. Pratt*

6. Reasonable and

11 B L R., p. C, 321 17 W N, 283

Alarming decision of lower Court in *Pratt v. Pratt*

Chowdhury & Gurney Dett Dixon & W N, 134

1. Ignorance for action for malicious prosecution—To sustain an action for malicious prosecution the prosecution must be proved to have been malicious and without reasonable or probable cause. *Pratt v. Pratt* & *Pratt v. Pratt*

.. .. .

MALICIOUS PROSECUTION—continued.

same day (the 25th) when served by the Municipal Commissioner was directed to the plaintiff, dated the 25th April, informing him that a "fresh summons" had been served upon him for not complying with the requirements of the notice served on him. The Court held that the non-appearance of the plaintiff on the 25th March was not caused by the receipt of this letter. On the 25th March, in consequence of the non-appearance of the plaintiff in obedience to the summons, a warrant of arrest was issued against him. The day originally intended in the warrant for the plaintiff's appearance before the Magistrate was the 25th April, but this date was generally altered to the 2nd June. There was no evidence as to how or by whom this alteration was made. The plaintiff, having been on the 25th March (the 25th) to face the Magistrate, and surrendered, he went to the Magistrate, the defendant's brother, and explained why he had not attended on the 25th. A note was made of his answer, and on the 27th, the plaintiff appeared before the Magistrate. He stated that at the office of the British Magistrate's Court he was informed that the warrant was with the Municipal Magistrate, and that he went away and did nothing in re. On the 27th April the Municipal Magistrate went to the plaintiff's house, and pointed out the work that was to be done. He (the plaintiff) alleged that the plaintiff that he would get the hearing of the summons postponed for a fortnight. The plaintiff then informed a plaintiff to do the requisite work, which was completed (as plaintiff alleged) on the 2nd April, and was presented and approved by the Municipal authorities. The plaintiff swore that he attended the Police Court on the 2nd April, but apparently did not bring his appearance to the notice of the Magistrate, as the Municipal Magistrate told the Court before he arrived. He further stated that he attended again on the 25th April, but was told by a Municipal Inspector that he might go away, as the work was done. Another warrant was again adjourned for the 19th May, but the case was again adjourned to the 2nd June. On the 31st May the plaintiff was arrested in execution of the warrant of the 25th March. The evidence was that on that morning, at 8 o'clock, a Municipal Inspector, H., who was not called as a witness at the hearing, accompanied by a Police constable, went to the plaintiff's house and pointed out the plaintiff to the police station and subsequently before the Magistrate. He was released on depositing Rs.25 as security for appearing when required. On the 16th June the plaintiff again appeared in the Police Court, when the summons was withdrawn. The plaintiff claimed Rs.10,000 as damages for malicious prosecution, wrongful arrest, and detention in custody and false imprisonment. The defendant denied that he had applied for or obtained the warrant for the plaintiff's arrest or that he or his servants had anything to do with the arrest or was responsible for it, save that a sub-inspector who knew nothing of the warrant had pointed out the plaintiff to a police officer at the latter's request. He further denied reasonable and probable cause. The lower Court (STANLEY, J.) held that the defendant was liable for the wrongful execution of the warrant against the plaintiff and awarded the latter Rs.500. On appeal, *Held* (affirming the decree of the lower Court) that the defendant was liable. On the 25th April, at any rate, the warrant in question was a spent warrant, and could not be properly executed, as it was, on the date of his own accord, the defendant could not be liable for its execution (as shown by the case of *West v. Smithwick*, 3 M. & W. 415), unless he or his subordinates took an active part in executing it. The mere circumstance that the plaintiff was pointed out to the police officer who executed the warrant by a Municipal Inspector might not of itself amount to taking an active part. But there were special circumstances which should be taken into consideration in conjunction with it. The length of time which elapsed before the warrant was executed, and the alteration of the date in the direction contained in the warrant as to taking bail, not explained in any way, and which could not have been made by the police, pointed to the warrant having been, if not in the actual keeping of the Municipal authorities, at any rate under their control, and to the police having been set in motion by them. Under these circumstances, it was incumbent on the defendant to give rebutting evidence, and more especially to call the Municipal Inspector to explain the circumstances under which he pointed out the plaintiff to the police officer who executed the warrant. *Acquitted*. *AYOONJI v. SHARADHA DUKSIBHAI*. I. L. R., 19 Bom., 485

24. —————
probable cause—Conviction by Magistrate and acquittal in Sessions Court.—In a suit to recover damages for a malicious prosecution, it was proved that the case for the prosecution having been that the plaintiffs had dishonestly broken open the defendant's grain-pit, and the defence that it was done under a claim of right, the Joint Magistrate convicted the accused, but that his sentence was reversed by the Court of Session. *Held* that, in the absence of any special circumstances to rebut it, the judgment of one competent tribunal against the plaintiffs afforded very strong evidence of reasonable and probable cause. *MAHAI BAPURAZ v. BEHARAKORDA CHINXA VENKAYYA*. 3 Mad., 238

25. —————
Execution of plaintiff by a Criminal Court.—The fact that the plaintiff in a suit for damages for malicious prosecution has been convicted by a competent Court, although he may subsequently have been acquitted on appeal, is evidence, if un rebutted, of the strongest possible character against the plaintiff's necessary plea of want of reasonable and probable cause. *Parvati Bapatra v. Bellamkonda Chinna Venkayya*, 3 Mad., 288, followed. *JADE-BAI SINGH v. SHRO SARAN SINGH* I. L. R., 21 All., 26

MALICIOUS PROSECUTION—continued.

brought without probable cause. *Held*, that the

under s 182. A person prosecuting another for

MALICIOUS PROSECUTION—continued.

20. *Suit for damages for malicious prosecution—Malice—Dis-*

honest motive—Effect of bringing a charge of assault for 'criminal intimidation'—Damages—

Reasonable and probable cause—Penal Code (Act

XLV of 1860), ss 351, 352, 303—Where, in a suit

for damages for malicious prosecution on a charge of

assault which was dismissed, it appeared from the

facts as found by the lower Courts that there was

'criminal intimidation' on the part of the plaintiff,

although he was not charged with that offence by the

defendant.—Held, that the plaintiff was not entitled

to any damages, as no malice or dishonest motive

could be imputed to the defendant in bringing the

charge of 'assault'—MADAN LAL AGRI GAYAWAN v

SATI PARDE DUANI

L. T. R., 27 Cal., 532

Suit for damages for loss of reputation owing to defendant giving

recorder damages for loss of reputation sustained by him in consequence Both the lower Courts decreed the plain-

to attend in Police Court on the 21st instant, as I

letter ended as follows: "I do not see any reason now

am ready and willing to do the work." The plaintiff

did not attend the Court on the 21st March. On that

reasonable and probable cause) recovered a warrant to

be issued against him on the 24th March 1892, and

subsequently procured that warrant to be executed at

a time when its force was spent and under circum-

stances belonging to him. The work not having

remains belonging to him. The work not having

to attend in Police Court on the 21st instant, as I

letter ended as follows: "I do not see any reason now

am ready and willing to do the work." The plaintiff

did not attend the Court on the 21st March. On that

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be issued against him on the 24th March 1892, and

subsequently procured that warrant to be executed at

a time when its force was spent and under circum-

stances belonging to him. The work not having

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to attend in Police Court on the 21st instant, as I

letter ended as follows: "I do not see any reason now

am ready and willing to do the work." The plaintiff

did not attend the Court on the 21st March. On that

reasonable and probable cause) recovered a warrant to

MALIKANA.

See ATTACHMENT—STRICTS OF ATTACHMENT—PROPERTY AND INTEREST IN PROPERTY OF VARIOUS KINDS.
[I. L. R., 3 Cal., 414

See DEED—CONSTRUCTION.
[I. L. R., 9 AU., 591

See MURDER, JURISDICTION OF.
[I. L. R., 19 Cal., 8

See OTHER ESTATES ACT, 1860.
[I. L. R., 4 Cal., 839

See SMALL CAUSE COURT, MORTGAGE—JURISDICTION—TITLE, QUESTION OF.
[I. L. R., 9 AU., 591

— Suit for—

See BENGAL REGULATION VIII OF 1793, R. 46.
4 B. L. R., A. C., 29

See LIMITATION ACT, 1877, ART. 132.
4 B. L. R., A. C., 29

2 W. R., 162
6 W. R., 161
7 W. R., 336
8 W. R., 102
12 W. R., 498
13 W. R., 465
19 W. R., 94
21 W. R., 88
22 W. R., 520, 551
I. L. R., 5 Cal., 921

See SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS—DAMAGES.
[3 B. L. R., Ap., 96

MAMLATDAR.

See LAND ACQUISITION ACT, 1870, s. 19.
[I. L. R., 17 Bom., 299

See CASES UNDER MAMLATDARS' COURTS ACT.
See WITNESSES—CITY CASES—PERSONS COMPELLED OR NOT TO BE WITNESSES.
[I. L. R., 17 Bom., 299

Court of—
See SANCTION TO PROSECUTION—WHERE SANCTION IS NECESSARY OR OTHERWISE.
[I. L. R., 5 Bom., 187

Disqualification of, to try case.
See JUDGE—QUALIFICATIONS AND DISQUALIFICATIONS.
[I. L. R., 19 Bom., 608

Order of—
See BOMBAY LAND REVENUE ACT, V OF 1879, s. 67.
I. L. R., 8 Bom., 188

See HIGH COURT, JURISDICTION OF—BOMBAY—CIVIL.
9 Bom., 249

MAMLATDAR—concluded.
See LIMITATION ACT, 1877, ART. 47.
[10 Bom., 479
I. L. R., 15 Bom., 299
I. L. R., 18 Bom., 348
I. L. R., 20 Bom., 270
I. L. R., 23 Bom., 525
See LIMITATION ACT, ART. 144—ADVERSE POSSESSION. I. L. R., 18 Bom., 348
See POSSESSION—EVIDENCE OF POSSESSION. I. L. R., 5 Bom., 387
See RES JUDICATA—JUDGMENTS ON PRELIMINARY POINTS.
[I. L. R., 6 Bom., 477
I. L. R., 21 Bom., 91
I. L. R., 24 Bom., 251

MAMLATDAR, JURISDICTION OF—

See LIMITATION ACT, 1877, s. 14.
[I. L. R., 18 Bom., 734

See CASES UNDER MAMLATDARS' COURTS ACT.
See SUPREMACY OF HIGH COURT

—CIVIL PROCEDURE CODE, s. 622.
[I. L. R., 9 Bom., 97
I. L. R., 18 Bom., 449
I. L. R., 20 Bom., 630
I. L. R., 21 Bom., 775

1. — Bom. Act V of 1864—
Possession—Right of way.—Held that an order passed by a Mamlatdar under Act V of 1864 (Bombay), directing the accused to keep open a right of way to a party, being in reality an injunction to refrain from disturbing the possession of the party, was therefore within the jurisdiction of the Mamlatdar. Reg. v. KRISHNASHASTRI BHAU MANJUNATH.

2. — Jurisdiction of Mamlatdar over officers of Government sued in their official capacity—Bombay Civil Courts Act (Bom. Act XIV of 1869), s. 32—Bombay Revenue Jurisdiction Act (X of 1876), s. 15.—A Mamlatdar has jurisdiction, under Bombay Act III of 1876, to hear and determine a suit brought against officers of Government for acts purporting to have been done by them in their official capacity. A Mamlatdar has no power to inquire into matters not covered by the issues laid down by the Act itself. BAVATRAO P. SPROUT.

3. — Effect of order of Mamlatdar as to possession—Act XVI of 1858, s. 1, cl. 2—Mamlatdar's Court a Revenue Court within contemplation of Bom. Reg. XVII of 1827—Maxim, "Optimus legis interpretor consuetudo," Application of—Kernedy when suit based order as to possession is barred—Title, suit based on.—On the 13th December 1868, prior to the passing of the Mamlatdar's Act (III of 1876), one B sued defendants 1 and 2 in a Mamlatdar's Court for the purpose of restraining them from disturbing him in the possession and enjoyment of the lands in dispute. On the 17th January 1864, the Mamlatdar

MALICIOUS PROSECUTION—continued

28
Criminal Court.—In a suit for damages for defama-
tion of character by maliciously bringing a false

27. Malice-Negli

[illegible]

Measure of damages—\$2.

brought, award substantial damages
Does a JOINTER CHARGE SEX

30
Assessment of damages—
Rees for counsel—in a suit for malicious prosecution for expense of counsel is not a proper element in the calculation of damages available to a plaintiff. Goday v. Nankian (Gavattini Nat. v. Azerbaijan Levkaya Paribano Nat. v. Mind, 85)

31
ARJITAN VEKATA BAHINGO HAD
6 MIND, 85
I need to talk
for defense before Criminal Court - in a suit
on account of malicious prosecution
the fee paid by the plaintiff is a liability for the

purpose of his defence before the Criminal Court as an "unfettered Dictator of Horrors", in *Gaspard's* *Law & Society*, 6 Mad 45 explained *Stuba* *Law & Society*, 6 Mad 162.

— "NATIVE," MEANING OF—

4 C.W.N. 437
I.L.H., 27 Cal. 44 848
I.L.H., 24 I.A. 76
I.L.H., 24 Cal. 408 834
I.L.H., 20 Cal. 806
I.L.H., 10 Cal. 342
OF WILLES-FAYES ASSOCIATE OR
Sole Under Law-Wilco-Construction

1. The first of these is the fact that the
 2. Government has not yet decided whether
 3. it will accept the offer of the
 4. International Bank for Reconstruction
 5. and Development to loan the
 6. Government the sum of \$100 million
 7. for the purpose of financing the
 8. construction of the new
 9. highway system.

MAMLATDAR, JURISDICTION OF

—continued.

Jurisdiction of the Mamlatdar. S. 332 of the Civil Procedure Code (Act XIV of 1852) applies. RAM-CHANDRA SUBRAO v. NAVAI

[I. L. R., 20 Bom., 351]

9. Delivery of possession in

execution of a decree of a Civil Court—

Subsequent lease to the judgment-debtor—Refusal of the Mamlatdar to restore possession after the expiration of the lease—Suit for possession—Cause of action.—V obtained possession of land from B in execution of a decree of a Civil Court. After B's refusal to vacate the land on the expiration of the lease, V brought a possessory suit in the Mamlatdar's Court. The Mamlatdar rejected the plaint, holding that he was not to order restoration of possession of the land again and again. Held that a fresh cause of action accrued to V on the refusal of B to give possession on the expiry of the lease, and that the Mamlatdar was wrong in declining to accept the plaint. VINAYAK VISHWANATH BHOIRI v. BAIU .

I. L. R., 20 Bom., 491

10. Irregular decree of

Mamlatdar made by consent of parties—

Mamlatdar's Court Act (Bom. Act III of 1876).—The applicant brought two possessory suits against the opponent in the Mamlatdar's Court for the recovery of certain pieces of land. By consent of the parties the opponent agreed to execute the decrees were passed in these suits that, unless the opponent paid a certain sum of money to the applicant, after the expiration of two months, the applicant, alleging that the money had not been paid as agreed, applied for execution of the decrees. The Mamlatdar found that the money had been tendered to the applicant, but had been wrongfully refused by him. He ordered execution to issue as to costs, but declined to make any order as to possession. The applicant thereupon applied to the High Court in its extraordinary jurisdiction, and alleged that the money had not been duly tendered. Held that the decrees were such as the Mamlatdar could not legally make under the provisions of the Mamlatdar's Court Act (Bom. Act III of 1876), and the consent of parties could not give him power to do so. RAMRAO DATTAJI PATIL v. BABAJI DHONDI BIRJE

[I. L. R., 20 Bom., 630]

11. Possessory suit against

lessee's heirs after the determination of the term.—Death of lessee during the term of lease.—If heirs succeeded to their father's rights under a lease, the jurisdiction of the Mamlatdar in a suit for possession arises on the determination of that lease against such heirs as though the original tenant were then alive. AMAROHAND HINDURAJ v. SAVAJI

[I. L. R., 21 Bom., 738]

12. Disposition of a third

person not a party to suit—Remedy of person so disposed—Civil Procedure Code (1852), s. 622.—G got a decree for possession against P in a Mamlatdar's Court. In execution the Mamlatdar directed the ouster of C, who was in possession and

MAMLATDAR, JURISDICTION OF

—continued.

who was not a party to the decree. Held that the Mamlatdar's order for the execution of the decree by the ouster of C was without jurisdiction, and that it should be set aside under s. 622 of the Civil Procedure Code. CHINAYYA v. GANGAYYA

[I. L. R., 21 Bom., 775]

13. Person ousted in execution

no party to the decree—Suit for possession in Mamlatdar's Court by person ousted.—A person ousted in execution of a decree of the Mamlatdar's Court, to which he was no party, can himself bring a suit for possession in the Mamlatdar's Court against the person by whom he was ousted, and the defendant in such a suit cannot rely on the fact of his having obtained possession in execution of a decree against other parties as a bar to the jurisdiction of the Mamlatdar. NINGAPPA v. ADVEPPA

[I. L. R., 24 Bom., 397]

14. Remedy as between joint

owners put into possession under decree of Civil Court.—In execution of the decree obtained in 1886 in a Civil Court, the plaintiff and the defendants were put into joint possession of certain land. The plaintiff subsequently brought this suit in the Mamlatdar's Court to recover possession of the said land, alleging that the defendants, by taking coconuts from trees standing thereon, had disposed of him of the said land and otherwise than by due course of law. The Mamlatdar held that the plaintiff had been thereby dispossessed, and passed a decree ordering the defendants to deliver up possession of the land to the plaintiff, together with the trees growing thereon. Held that the Mamlatdar had no jurisdiction to pass the decree. The Civil Court had passed a decree giving the parties joint possession of the land, and the Mamlatdar had no jurisdiction to override that decision and to place the plaintiff in exclusive possession. By the decree of the Civil Court they were determined to be joint owners, and the remedy in case of unequal possession or taking of produce was a suit for an account or for partition. BHAU v. DABE KANISHKJI BHAGVI I. L. R., 21 Bom., 777

MAMLATDAR'S COURTS ACT (BOM. BAY ACT V OF 1864).

See EXECUTION OF DECREE—MODE OF EXECUTION—GENERALITY—POWERS OF OFFICERS IN EXECUTION.

[5 Bom., A. C., 158]

See HIGH COURT, JURISDICTION OF—BOMBAY, 249

See JURISDICTION OF REVENUE COURT—BOMBAY REGULATIONS AND ACTS.

[I. L. R., 1 Bom., 624]

See LIMITATION ACT, 1877, ART. 47.

[9 Bom., 424]

I. L. R., 5 Bom., 27

10 Bom., 479

I. L. R., 18 Bom., 348

MAMLATDAR, JURISDICTION OF

—continued—

them died pending the suit, and it appeared that the right to sue did not survive to the surviving plaintiff alone—*Held* that the Mamlatdar, having therefore no jurisdiction to substitute parties had no alternative but to dismiss the suit. *Gajnar-Narayan v. Harnoon (Mamlatdar)* [I. L. R., 17 Bom, 645]

possession of property in the execution of a decree for possession on order by a Mamlatdar against a defendant under Bombay Act III of 1860 and it is beyond the power of a Government by resolution to give a Mamlatdar authority to oust a third party. *Abdullah v. Harnoon* (Mamlatdar) [I. L. R., 17 Bom, 645]

6 Possessory suit—*Mamlatdar v. Harnoon* (Mamlatdar) [I. L. R., 17 Bom, 645]

7 Possessory suit by landholder—*Mamlatdar v. Harnoon* (Mamlatdar) [I. L. R., 17 Bom, 645]

8 Possessory suit—*Mamlatdar v. Harnoon* (Mamlatdar) [I. L. R., 17 Bom, 645]

9 Possessory suit by landholder—*Mamlatdar v. Harnoon* (Mamlatdar) [I. L. R., 17 Bom, 645]

MAMLATDAR, JURISDICTION OF

—continued—

made an order to that effect against the said defendant, who committed to sue by act said that order in 1860, B being then dead his widow (defendant 3) executed in favour of the plaintiff a mortgage in respect of the lands in dispute which was also ratified by her adopted son (defendant 4). In 1871 the plaintiff sued to recover possession of the lands. Defendants 1 and 2 contended (inter alia) that the lands were their private property and had never been in the possession of B or his widow. The suit went up to the High Court and was remanded for the determination of the issues, viz, (1) whether B died at the time of his death such a title to the lands as would have entitled him to make a mortgage thereof and (2) whether there was any valid adoption of defendant 4 by defendant 3. On remand the Court of first instance found on the issues in the affirmative, being of opinion that defendant 3 was in possession at the time the mortgage was executed to the plaintiff. The defendant appealed and the Subordinate Judge confirmed the lower Court's decree. *He*

was in possession in 1860 when she granted the mortgage. The plaintiff could not have acquired any title by possession before the plaintiff's suit in 1871. [I. L. R., 14 Bom, 372]

10 Possessory suit by landholder—*Mamlatdar v. Harnoon* (Mamlatdar) [I. L. R., 17 Bom, 645]

MANAGER OF ATTACHED PRO-

PERTY—continued.

In any other, the arrangement would at the same time save the debtor from great prospective loss. *ZHOORUN v. NUTREBOODREN*. 11 W. R., 505

of attached property—Civil Procedure Code, 1859, s. 243. Act VIII of 1859, gives no authority to a Court to give a lease or mortgage of attached property, but only to give time to the judgment-debtor to mortgage or let his land, or sell part of it when he can satisfy the Court that there is reasonable ground to believe that the amount of the decree will be raised thereby. *LONKAREV DOOGUR v. JAGUR*. W. R., 1864, Mis., 5

Code, 1859, s. 248—Ground for allowing time to pay decree.—A Judge is not bound, under s. 213, Act VIII of 1859, to allow a judgment-debtor a year's time to pay his decree, without the debtor assigning some good or sufficient reason for the delay, e.g., that the money due to the judgment-creditor could be raised equally well in some other way than by immediate sale, and that the creditor would not be put to loss. *RAJ RATTUN NEOG v. LAND MORTGAGE BANK OF INDIA*. [17 W. R., 193

Ground for allowing time to pay decree—Civil Procedure Code, 1859, s. 243.—There should be a reasonable probability of the debt being discharged by the profits of the estate within a reasonably short period. *SURUR NARAIN SAHAR v. RAJ PERSHAD MESSRS*. [21 W. R., 146

of property—Rules of High Court, 11th July 1871.—Where property of a judgment-debtor is already in charge of a manager duly appointed, and it is proposed to put other properties belonging to the debtor also under his charge, an attachment of the property is necessary before appointing the manager to take charge of them. The rule of Court of 11th July 1871 does not limit the time for which a manager should be appointed to two years. The Judge as to that should exercise a proper discretion. *BANWARI LAL SART v. GINDHARI SINGH*. [8 B. L. R., Ap., 23: 16 W. R., 275

Agent of—*of railway, Agent of—See RAILWAYS ACTS, s. 77.* [1. L. R., 24 Cal., 306

MANAGER OF ATTACHED PRO-

PERTY.

See ACT XI OF 1859, s. 5. [2 B. L. R., 297

[12 B. L. R., 11 A., 89

See CASES UNDER RECEIVER.

1. Appointment of manager—

Discretion of Court—Civil Procedure Code, 1859, s. 503 (1859, s. 249).—It is discretionary with the Court to appoint a manager under this section. *PRO-*

ENDER NARAIN ROY v. KASSASSUR ROY

[1 W. R., Mis., 15

[23 W. R., 287

Consent of decree-holder—Civil Procedure Code, 1859, s. 243.—A

manager may be appointed by the Court under Act VIII of 1859, s. 213, without the consent of the decree-holder. *THAKOOR CHANDER v. CHOWDARY CHOHER SINGH*. Marsh., 261: 2 Hay, 112

3. Civil Procedure Code, 1859, s. 243.—In appointing a manager under s. 243, Act VIII of 1859, a Court must exercise a reasonable discretion; and the sole reason for such appointment ought to be that, in this the debts would be equally satisfied in that manner, and as surely as

Time in which debt could be paid off.—A Court exercising a decree was held to have been justified in refusing to appoint a manager for attached property belonging to the judgment-debtor where it would have taken twenty years to pay off the debt from the profits of the property. But the High Court saw no objection to the appointment of a manager to dispose of portions of the property, by sale, mortgage, and otherwise, under s. 243, Code of Civil Procedure, if the debt could thereby be cleared off in six months. *MONUN DOSS v. RAJ KANT CHOWDARY*. [15 W. R., 322

[17 W. R., 101

AGOODHRYA DOSS v. DOORGA DUTT SINGH

quest, and allowing the sale of other properties at-
ached, which properties were placed along with the
above in the hands of the manager. HERE DEKARE
MORRISON & JOSEPH COOMAN MOOREHEAD

[19 W. R., 66

21. Death of manager—

Under the will of a manager appointed under
Act VIII of 1859, s. 213, reviewed the property made,
and finding that, under such management, the decree
was not likely to be satisfied for a very long time,
directed execution to proceed against the estate,
Held that the direction had been properly exercised.
JOHN BERT SIMON & BEXWATE LARIT SANO

[25 W. R., 33

MANDAMUS.

See CALCUTTA MUNICIPAL ACT, 1858, s. 151.
[8 B. L. R., 433

See HILLER or HIGH COURT, (CALCUTTA).
[8 B. L. R., 433

Order absolute for—

See LETTERS PATENT, HIGH COURT, CL. 15.
[8 B. L. R., 433

Power of High Court to issue—

See TEASHER or CHIVAL CASE—GEN-
RAL CASES. I. L. R., 2 Cal., 278

1. Ground for issue of writ—

Writ of Mandamus.—A mandamus will not issue
to compel a Magistrate to proceed with a criminal
charge in respect of any matter involved in, or affect-
ing the merits of, a civil suit still pending. The
proper course for a Magistrate to pursue in such a
case is not to dismiss the summons, but to adjourn
the hearing pending the decision of the Court in the
civil action. GREEN & CHAKRA

[Ind. Jur., O. S., 137

2. Discretion of

*Magistrate to refuse to proceed with criminal
charge pending civil suit.*—Where a Magistrate
has, in the exercise of his discretion, refused to pro-
ceed with a criminal charge pending a civil action in
respect of the matter out of which the charge arose,
a mandamus will not be granted to compel the hear-
ing of the charge. EX-PARTE VARADACHARI NAY-
AG

1 Mad., 66

3. Magistrate finding

*evidence does not amount to offence charged—
Error of law.*—A charge was made against the
accused of using criminal force under s. 141 of the
Penal Code. The Police Magistrate heard the
evidence for the prosecution, and, without disbeliev-
ing it, decided it did not amount to the offence
charged. Held that, assuming that an error of law
had been committed, the High Court had no power to
issue a mandamus to the Magistrate to commit the
accused. It was not a case where the Magistrate had

quest, and allowing the sale of other properties at-
ached, which properties were placed along with the
above in the hands of the manager. HERE DEKARE
MORRISON & JOSEPH COOMAN MOOREHEAD

[19 W. R., 66

21. Death of manager—

Under the will of a manager appointed under
Act VIII of 1859, s. 213, reviewed the property made,
and finding that, under such management, the decree
was not likely to be satisfied for a very long time,
directed execution to proceed against the estate,
Held that the direction had been properly exercised.
JOHN BERT SIMON & BEXWATE LARIT SANO

[25 W. R., 33

MANDAMUS.

See CALCUTTA MUNICIPAL ACT, 1858, s. 151.
[8 B. L. R., 433

See HILLER or HIGH COURT, (CALCUTTA).
[8 B. L. R., 433

Order absolute for—

See LETTERS PATENT, HIGH COURT, CL. 15.
[8 B. L. R., 433

Power of High Court to issue—

See TEASHER or CHIVAL CASE—GEN-
RAL CASES. I. L. R., 2 Cal., 278

1. Ground for issue of writ—

Writ of Mandamus.—A mandamus will not issue
to compel a Magistrate to proceed with a criminal
charge in respect of any matter involved in, or affect-
ing the merits of, a civil suit still pending. The
proper course for a Magistrate to pursue in such a
case is not to dismiss the summons, but to adjourn
the hearing pending the decision of the Court in the
civil action. GREEN & CHAKRA

[Ind. Jur., O. S., 137

2. Discretion of

*Magistrate to refuse to proceed with criminal
charge pending civil suit.*—Where a Magistrate
has, in the exercise of his discretion, refused to pro-
ceed with a criminal charge pending a civil action in
respect of the matter out of which the charge arose,
a mandamus will not be granted to compel the hear-
ing of the charge. EX-PARTE VARADACHARI NAY-
AG

1 Mad., 66

3. Magistrate finding

*evidence does not amount to offence charged—
Error of law.*—A charge was made against the
accused of using criminal force under s. 141 of the
Penal Code. The Police Magistrate heard the
evidence for the prosecution, and, without disbeliev-
ing it, decided it did not amount to the offence
charged. Held that, assuming that an error of law
had been committed, the High Court had no power to
issue a mandamus to the Magistrate to commit the
accused. It was not a case where the Magistrate had

[25 W. R., 220

See HILLER or HIGH COURT, (CALCUTTA).
[8 B. L. R., 433

See HILLER or HIGH COURT, (CALCUTTA).
[8 B. L. R., 433

See HILLER or HIGH COURT, (CALCUTTA).
[8 B. L. R., 433

See HILLER or HIGH COURT, (CALCUTTA).
[8 B. L. R., 433

MARRIAGE—continued.

See HINDU LAW—MARRIAGE.
See JURISDICTION OF CIVIL COURT—
MARRIAGES.
See MAHOMEDAN LAW—MARRIAGE.

3 Bom., A.C., 113
[I.L.R., 11 Bom., 1
I.L.R., 13 Bom., 302
I.L.R., 17 Bom., 148
I.L.R., 22 Bom., 430
I.L.R., 23 Bom., 278
Agreements or contracts con-
cerning—
See CONTRACT ACT, s. 23—ILLEGAL CON-
TRACTS—AGAINST PUBLIC POLICY.
[11 B.L.R., 129
22 W.R., 517
26 W.R., 32
I.L.R., 10 Cal., 1054
I.L.R., 10 Bom., 152
I.L.R., 17 Mad., 9
I.L.R., 13 Bom., 126, 131
I.L.R., 13 Mad., 83
I.L.R., 16 Bom., 673
I.L.R., 22 Bom., 658
See SPECIFIC PERFORMANCE—SPECIAL
CASES 7 Bom., O.C., 132
[5 W.W., 102
I.L.R., 1 Cal., 74

Buddhist laws of—

See BENGAL CIVIL COURTS ACT, 1875, s. 4.
[I.L.R., 10 Cal., 777
I.L.R., 11 A., 109

Dissolution of—

See CASES UNDER DIVORCE ACT.

Effect of—

See CASES UNDER MARRIED WOMAN'S PRO-
PERTY ACT.

See SUCCESSION ACT, s. 4.
[I.L.R., 23 Cal., 506

Expenses of—

See HINDU LAW—ALIMENTATION—ALIMEN-
TATION BY MOTHER.
[I.L.R., 18 All., 474
See HINDU LAW—INHERITANCE—IN-
PARTIBLE PROPERTY.
[I.L.R., 16 Mad., 54

See SUCCESSION ACT, s. 56.
[I.L.R., 1 Cal., 148

Lawful polygamous—

See SUCCESSION ACT, s. 56.
[I.L.R., 1 Cal., 148

Nullity of—

See DIVORCE ACT, ss. 4 AND 18.
[13 B.L.R., 109

See HUSBAND AND WIFE.
[I.L.R., 21 Bom., 77

MANDAMUS—continued.

plead and demand a return to a writ of mandamus,
without first obtaining leave of the Court. Reg.
East INDIA RAILWAY COMPANY
[1 Ind. Jur., N.S., 244

MANORIAL DUES.

See CUSTOM [I.L.R., 1 All., 440

MAPILLAS.

See MALABAR LAW—CUSTOM.
[I.L.R., 16 Mad., 60

See MALABAR LAW—JOINT FAMILY.
[I.L.R., 16 Mad., 18

I.L.R., 17 Mad., 69

See MALABAR LAW—MAINTENANCE.
[I.L.R., 6 Mad., 259

Adoption of Hindu law—*Presump-*
tion as to form per est.—Although Mapillas in
Malabar customarily follow the Hindu custom of hold-
ing family property undivided, yet, as they are not
subject to the same personal law as the Hindus, their
claims cannot be governed by the legal presumption
of joint ownership. *Muneri v. KUNJI KUTTI*
[I.L.R., 8 Mad., 452

MAPS.

Inspection of—

See CIVIL CASES—MAPS.
[13 Moore's I.A., 907
8 B.L.R., 677

MARGINAL NOTES TO ACTS.

See STATUTES, CONSTRUCTION OF.

[I.L.R., 20 Cal., 609
I.L.R., 23 Cal., 55
I.L.R., 25 Cal., 858

MARKET.

See MADRAS DISTRICT MUNICIPALITIES ACT,
s. 198. [I.L.R., 10 Mad., 216

License for—

See BENGAL MUNICIPAL ACT, 1844, s. 337.
[I.L.R., 20 Cal., 654

MARKET RATE.

See EVIDENCE—CIVIL CASES—MISCELLA-
NEOUS DOCUMENTS—MARKET RATE.
[I.L.R., 10 Cal., 565

MARRIAGE.

See CASES UNDER BIGAMY.

See CONSIDERATION. 2 Mad., 128

See HINDU LAW—INHERITANCE—DI-
VESTING OF, EXCLUSION FROM, AND
FORFEITURE OF, INHERITANCE—MAR-

riage.

MARRIAGE—continued.

strong, distinct, satisfactory and conclusive, must prevail. *Piers v. Piers*, 2 H. T. C., 381, followed. According to the rule of the Church of Rome, a dispensation from the proper ecclesiastical authority is necessary to give validity to a marriage between a man and the sister of his deceased wife. In this case the parties were Roman Catholics and intended to become husband and wife, and a ceremony of marriage was performed between them by a clergyman competent to perform a valid marriage. *Held* that the Court was bound to presume that a dispensation necessary to remove the obstacle to the marriage on the ground of affinity had been obtained. *Lovett v. Lovett*.

— *Suit for nullity of marriage* — *Divorce Act* (11th of 1869), art. 18, 19 (2) — *Doctrine of origin* — *Religious community* —

We have the petitioners, a member of the Church of England, came to India about the year 1867, his domestic of origin being then English and in 1871

married the legitimate sister (since deceased) of his second wife, whom he subsequently married in 1887, it being uncertain what his domestic was at

(the date of his first marriage, - *Mold* in a suit for nullity of marriage that either the petitioner carried with him to India the laws as to capacity to marry

by which he was originally converted, or he was governed by the law of the class to which he belonged, and that in either case the magistrate could not be

unreported. Lopez v. Lopez, 1. L. R. 12 (Oct., 506,
referred to and applied. HILLMAN v. MICHAM.

7. — Personal status — Christian marriage followed by Mohammedan marriage.

Stage Rights of new Mohammedan law— In a suit to obtain a widow's share under Mohammedan law in the estate of the deceased, it was

proved that the plaintiff and deceased had been married in 1855 as professed Christians in a church at Almont; that subsequently, having reverted to

Monism, they were married a second time according to Ashman law in Ash form, which second marriage had not been dissolved by a

Malone and divorce. In 1886 the husband died, leaving a will excluding the wife from all participation in his estate. *Held* that the personal status

of the deceased being at the time of his death that of Mahomedan, and the plaintiff's pers and status being that of his wife under the same law, she was entitled to

share in his estate, notwithstanding his will, which was voided, but under Mohammedan law was inoperative, to exclude her. *Quare*—Whether in the case of

...of the rights of individuals to marry, such as

After marriage with the assent of both spouses, without any intent to commit a fraud on the law, effects any change in those rights SKINNER, SKINNER

[1. L. R., 25 Calg., 537
L. R., 25 I. A., 34
2 C. W. N., 209

8. - - Suit by wife for
dissolution of marriage—General and relative im-
portance of each—Hans Morgenthau

MARRIAGE—concluded.

MAHARAJA—concluded.

Act (17 of 1866), s. 25.—In March 1882 the plaintiff and defendant, Parsie, were married according to the rites and ceremonies of their religion. In October 1882 the plaintiff attained puberty, and for seven months from that time she lived with the defendant in his parents' house; but there was no consummation of the marriage. There was no physical defect in either plaintiff or defendant, nor any unwillingness in the plaintiff to consummate the marriage; but the defendant had always entertained such hatred and disgust for the plaintiff as to result, in the opinion of the medical experts, in an incurable impotency in the defendant as regards the plaintiff. The charges unanimously found, on the evidence, that the consummation of this marriage had from its commencement been impossible, because the defendant was, from a physical cause, namely, impotency as regards the plaintiff, unable to effect consummation. They also found that there was no collusion or connivance between the parties. Held on this finding that such impotency *quod* the plaintiff must be regarded as one of the causes going to make consummation of a marriage impossible under s. 28 of Act XV of 1865, there being nothing in the Act to suggest a contrary opinion. The observations of Dr. LARMINATOR and of Lord WATSON in *G. v. M. T. N.*, 10 A. C. 171, as to impotency *quod* *hinc* and practical possibility of consummation, approved and followed. S. v. B. I. I. R., 16 Bom., 638

MARRIAGE ACT (CHRISTIAN) V OF

s. 58—Offence of solemnizing illegal marriage—Celebration of marriage in Hindu form by Hindu priest where one party is a Christian convert.—A Hindu priest was charged with knowingly and wilfully solemnizing a marriage between two persons, one of w. m. possessed the Christian religion, the said priest not being duly authorized under s. 6 of Act V of 1866, an offence punishable under s. 56 of the same Act. The Sessions Judge discharged the accused with out trial on the ground that the enactment in question was inapplicable to the celebration of a marriage according to the Hindu form by a Hindu priest, though one of the contracting parties was a Christian convert. Held that this view of the law was erroneous, and that the accused was prima facie liable under s. 56 of the Act. Anonymous Case 144 under s. 56 of the Act. Anonymous Case 144 under s. 56 of the Act.

MARRIAGE ACT (XV OF 1872).

ss. 5, 10, 12, 13, 38, 68, 70, and 78—Persons authorized to perform marriages—Omission of formalities required, as notice, &c.—Synodically-ordained priests of the Syrian Church, under the jurisdiction of the Patriarch of Antioch, solemnized two marriages according to Roman ritual without publishing or consenting to be affixed the notices of such marriages required by Part III of the Act. It was proved that S used the Roman ritual without the sanction of his Bishop, who was appointed by the Patriarch. Held that S, having

MARRIAGE—continued.

3. Marriage with deceased wife's sister — *Stat 6 & 6 Wm IV, c 61* — The marriage of an East Indian, domiciled in Calcutta, with the sister of his deceased wife, is not void under 5 & 6 Wm IV, cap 61. *Das Narayana v. Coors* 2 Hyde, 65
 4. *Marrages of Native Christian converts* — The question as to the validity of marriages between converts and natives is governed by the *Native Christian Converts Act* — *Prohibited degrees* — *Roman Catholics* — *East Indians* — *Customary*
 5. *Prohibited degrees* — *Roman Catholics* — *East Indians* — *Customary*
- but for restitution of conjugal rights to make a marriage binding that they were Roman Catholic subjects with Portuguese names and it not having been found whether they were of English or any other European descent, or of native or mixed parentage. — *Held* that the prohibited degrees for the purposes of the law of England, but those prohibited by the customary law of the class to which they belonged, — that is to say, the law of the Roman Catholic Church as applied in this country. *Held* by the Division Bench (GARRIN, C.J. and WILSON, J.) on the case being returned to it — "Where a man and a woman intend to become husband and wife, and a ceremony of marriage is performed between them by a clergyman competent to perform a valid marriage, the presumption in favour of everything necessary to give validity to such marriage is one of very exceptional strength, and unless rebutted by evidence

- MARRIAGE—continued
- Presumption of** — *See Cases under MARRIAGE LAW* — *Ac-KNOWLEDGMENT*.
See Penal Code, s 498
 18 B. L. R., Ap, 63
- Proof of** — *See Cases under ADULTERY*
See Cases under BIGAMY.
See Divorce Act, s 14
 18 L. R., 16 Mad., 465
See Penal Code, s 498
- Registration of** — *See BYENDECK* — *Civil Cases* — *Miscellaneous Documents* — *MARRIAGES* — *REGISTRATION OF* — *18 L. R., 10 Cal., 607*
- The marriage**.
See Hindu Law — *INTERFERENCE* — *DI-RECTION OF EXCLUSION FROM, AND FORFEITURE OF INTERFERENCE* — *MARRIAGE*
 18 L. R., 19 Cal., 289
 18 L. R., 22 Bom., 321
See Jurisdiction of Civil Court — *CASES*
 18 L. R., 13 Mad., 293
- Unauthorized solemnization of** — *See MARRIAGE ACT 1872* s 68
 18 L. R., 14 Mad., 342
 18 L. R., 17 Mad., 391
 18 L. R., 18 Mad., 230
 18 L. R., 20 Mad., 12
- Validity of** — *See High Court, JURISDICTION OF* — *BOMBAY* — *CIVIL*.
 18 L. R., 16 Bom., 136
See MARRIAGE LAW — *ACKNOWLEDGMENT*
 18 L. R., 21 A., 66
 18 L. R., 21 A., 66
- Adoption by** *Christians of Mahomedan religion for purpose of marriage* — *Question* — *Whether a marriage according to Mahomedan rules between a married Christian man and a Christian woman both of whom became Mahomedans in order to effect the marriage, is valid* *See* *SKIVER v. OBER*
 18 B. L. R., 125; 14 Moore's L. A., 308
 17 W. R., 77
- Law of domicile** — *See* *place of celebration* — *domicile* — *A marriage*

MARRIED WOMAN'S PROPERTY ACT
 —concluded.
 satisfied out of the separate property of a married woman in, in the case of post-nuptial debts, restricted to the property as to which there is no restraint on anticipation. S. 8 of Act III of 1874 was not intended to give married woman the power of creating such restraint. *Hippelie v. Stuart*, L. L. R., 12 Cal., 622, dissented from. *In re Mante*, L. L. R., 18 Mad., 19

MARSHALLING OF SECURITIES.

See MORTGAGE—MARSHALLING.

MASSSES.

Request for performance of—

See WILL—CONSTRUCTION. 2 Hyde, 65

12 B. L. R., O. C., 148
 5 B. L. R., 433
 1 L. L. R., 15 Mad., 424

MASTER AND SERVANT.

See ARMS ACT, 1878.

1 L. L. R., 20 Cal., 434
 3 C. W. N., 394
 1 L. L. R., 19 AU., 276
 1 L. R., 24 Bom., 423
 1 L. R., 22 AU., 118

See CHANGE—TORY OR CHANGE—SPECIAL
 CASES—MASTER AND SERVANT.
 13 Bom., Ap., 1

See GOVERNMENT. 7 B. L. R., 688

See JUDGE—QUALIFICATIONS AND DISQUALIFICATIONS.

1 L. L. R., 9 Bom., 172

See IMITATION ACT, 1877, s. 10 (1859, s. 2)

1 B. L. R., s. 10 (1859, s. 2)

See SECRETARY OF STATE. 1 N. W., 118

Bourke, A. O. C., 106
 5 Bom., Ap., 1

1. Liability of master for acts of servant—Acts within scope of servant's duty. —A master is responsible for the acts of his servants done within the scope of his duties, and for the master's benefit. *ARUNT DAS v. KERRY*

1 N. W., Part 7, p. 107; *Id.* 1873, 194

2. *Types a s.*—The appellant, having obtained a decree for khas possession of a share in a zamindari, had refused to recognize the rights whom the farmers under her co-sharers had settled in the estate; and her servants cut and carried off the crops of those tenants. *Held* by *GROVER, J.*, that the appellant was liable for the acts of her servants, which were done in furtherance of her known wishes and for her benefit. *Held* by *LOOM, J.*, that those acts were beyond the ordinary scope of the servants' duty; and that, unless it could be shown that the appellant ordered or ratified the acts, she was not liable. In the present case,

MARRIED WOMAN.

See MAINTENANCE, ORDER OF CHUMKAT COURT AS TO. L. L. R., 18 Bom., 468

See MISON—INTERPRETATION OF MISON IN SUTS. 1 L. L. R., 17 Cal., 488

See GOVERNING OFFICER. 1 L. L. R., 1 Mad., 101

See CASTA UNDER PENAL CODE, s. 498.

Liability of—

See SUCCESSION ACT, s. 4.

13 B. L. R., 383

MARRIED WOMAN'S PROPERTY ACT.

See SUCCESSION ACT, s. 4.

13 B. L. R., 363

See HUSBAND AND WIFE.

1 L. L. R., 4 Cal., 140
 2 C. L. R., 431

ns. 7 and 8.

See HUSBAND AND WIFE.

10 C. L. R., 536

See PARTIES—PARTIES TO SUTS—HUSBAND AND WIFE.

1. Husband and wife—Settlement—Property settled on married woman to her separate use and without power of anticipation—Power of married woman to charge such property with payment of debts incurred subsequently to marriage.—*Held* that, under s. 8 of Act III of 1874, a married woman has power to charge property settled upon herself, for her separate use without power of anticipation, with the payment of debts incurred by her subsequently to her marriage, and such a charge is valid and binding. *CHITRAJI DISTONJI TAPACHAND v. DISTONJI DOSABHAY*

2. and s. 8—Restraint on anticipation—Transfer of Property Act (I of 1852), s. 10—S. 8 of Act III of 1874 extends to the separate property of a married woman subject to a restraint upon anticipation. S. 10 of the Transfer of Property Act merely excepts from the general rule laid down in that section the particular case of a married woman, and does not give to a restrained anticipation any greater force than it had before the effect it had previously, leaving the Married Woman's Property Act of 1874 and the decisions upon it untouched. *HIPPOITE v. STEVART*

3. Insolvency of married woman—Property settled on her for separate use without power of anticipation, whether comprised in the vesting order or not—Insolvent Act (II of 1872, s. 21), s. 68.—A creditor's right to be

MARRIAGE ACT (XXV OF 1879)—continued.

4. Solemnization of marriages
under Hindu rites between a Native Christian and a Hindu by a person not authorized to perform mar-
riages under s. 6 of the Act—A person who per-
forms a ceremony of marriage according to Hindu
rites between a Native Christian and a Hindu con-
forms an offence under s. 68 of Act XV of 1872, unless
he is authorized to solemnize marriages under s. 5 of
the Act. See *Anonymous case*, 6 Mad. App., 20
Q.B. 119, 120, 121.

[L. I. R., 17 Mad., 391]

— Suit to Recover —

See CONTRACT-ALTERATION OF COM-
TRACTS-ALLOCATION BY THE COURT
13 B L R, 4p, 34

MARriage SETTLEMENT

See HUSBAND AND WIFE
[I L R, 10 Cal, 951]

See WILL-CONSTRUCTION
U. L. R., 4 CALIF., 514

—Order as to—

See DIVORCE ACT § 40
[14 B L R., AP, 6]

Construction of settlement—Trust

Church was not solemnized according to the rules and ceremonies and customs of the Syrian Church held further that Part III of the Act only applies to ministers of religion licensed under that Act and not to episcopally ordained persons. *GURAVATH v. SARRAZ* I T. R., 19 Mad., 273

Penal Code (Act 171 of 1860) s 198—*"Ignorantia juris non excusat"*—*"Ignorantia juris non excusat"*—*"Ignorantia juris non excusat"* cannot be applied to a declaration though in fact it is, in the under s 180

quarantined by that section to be made a declaration of emergency and the declaration is provided for by a 66 of the hard Act consequences further, in order to entail the penal consequences described must be made , intentionally , , , , I L R, 18 AL, 212 KENNEDY & ROBINSON

I ————— B 83-2417-288

Testimony—The accused was charged with having committed an offence under the Indian Christian Marriage Act as GS was acquitted on its appearing that the Christian whose marriage he purported to

2 So ensure: 'Conjugal Performance of marriage by authorized person—

absent in the Indian Christian marriage act
 as the word "sacrament" is equivalent to the words
 "conjoint celebration, or perform" therefore any
 unauthorised person not being one of the persons
 being married who takes part in performance, is
 liable to be convicted under this act, but in charge
 of abductees is liable as a party to the offence.
 married persons & a party.

3 and 5. *My right solemn*

MASTER AND SERVANT—continued.

the circumstances gave rise to a strong presumption that the acts were done with her knowledge, which presumption had not been rebutted, and therefore she was liable. *SHAMASCHYAR DESAI v. DEXRU* 2 B. L. R., A. C. 227.

S C SHAKASOONDESE DESAI v. MAITREY 11 W. R., 101.

3 Master of ship—

Damage done to person by subordinate officer or crew—Where a servant in the course of his employment, and in doing what he believed to be for the interests of his master, acts carelessly, recklessly,

and is injured, the master is liable to compensate him.

See 10 W. R., 101.

4. A boat which S

let to G & Co for unloading the ship B was lost in consequence of the negligence of the mate S

and the captain for the damage sustained and the lower Court dismissed the suit with costs, on the ground that G & Co, the ship's agents who hired the boat, and not the captain were liable.

See 10 W. R., 101.

5. *See* 10 W. R., 101.

6. *See* 10 W. R., 101.

7. *See* 10 W. R., 101.

8. *See* 10 W. R., 101.

9. *See* 10 W. R., 101.

10. *See* 10 W. R., 101.

11. *See* 10 W. R., 101.

12. *See* 10 W. R., 101.

13. *See* 10 W. R., 101.

14. *See* 10 W. R., 101.

15. *See* 10 W. R., 101.

16. *See* 10 W. R., 101.

17. *See* 10 W. R., 101.

18. *See* 10 W. R., 101.

19. *See* 10 W. R., 101.

20. *See* 10 W. R., 101.

21. *See* 10 W. R., 101.

22. *See* 10 W. R., 101.

23. *See* 10 W. R., 101.

24. *See* 10 W. R., 101.

25. *See* 10 W. R., 101.

26. *See* 10 W. R., 101.

27. *See* 10 W. R., 101.

28. *See* 10 W. R., 101.

29. *See* 10 W. R., 101.

30. *See* 10 W. R., 101.

31. *See* 10 W. R., 101.

32. *See* 10 W. R., 101.

33. *See* 10 W. R., 101.

34. *See* 10 W. R., 101.

35. *See* 10 W. R., 101.

36. *See* 10 W. R., 101.

37. *See* 10 W. R., 101.

38. *See* 10 W. R., 101.

39. *See* 10 W. R., 101.

40. *See* 10 W. R., 101.

41. *See* 10 W. R., 101.

42. *See* 10 W. R., 101.

43. *See* 10 W. R., 101.

44. *See* 10 W. R., 101.

45. *See* 10 W. R., 101.

46. *See* 10 W. R., 101.

47. *See* 10 W. R., 101.

48. *See* 10 W. R., 101.

49. *See* 10 W. R., 101.

50. *See* 10 W. R., 101.

51. *See* 10 W. R., 101.

52. *See* 10 W. R., 101.

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58. *See* 10 W. R., 101.

59. *See* 10 W. R., 101.

60. *See* 10 W. R., 101.

61. *See* 10 W. R., 101.

62. *See* 10 W. R., 101.

63. *See* 10 W. R., 101.

64. *See* 10 W. R., 101.

65. *See* 10 W. R., 101.

66. *See* 10 W. R., 101.

67. *See* 10 W. R., 101.

68. *See* 10 W. R., 101.

69. *See* 10 W. R., 101.

70. *See* 10 W. R., 101.

71. *See* 10 W. R., 101.

72. *See* 10 W. R., 101.

73. *See* 10 W. R., 101.

74. *See* 10 W. R., 101.

75. *See* 10 W. R., 101.

76. *See* 10 W. R., 101.

77. *See* 10 W. R., 101.

78. *See* 10 W. R., 101.

79. *See* 10 W. R., 101.

80. *See* 10 W. R., 101.

81. *See* 10 W. R., 101.

82. *See* 10 W. R., 101.

83. *See* 10 W. R., 101.

84. *See* 10 W. R., 101.

85. *See* 10 W. R., 101.

86. *See* 10 W. R., 101.

87. *See* 10 W. R., 101.

88. *See* 10 W. R., 101.

89. *See* 10 W. R., 101.

90. *See* 10 W. R., 101.

91. *See* 10 W. R., 101.

92. *See* 10 W. R., 101.

93. *See* 10 W. R., 101.

94. *See* 10 W. R., 101.

95. *See* 10 W. R., 101.

96. *See* 10 W. R., 101.

97. *See* 10 W. R., 101.

98. *See* 10 W. R., 101.

99. *See* 10 W. R., 101.

100. *See* 10 W. R., 101.

101. *See* 10 W. R., 101.

102. *See* 10 W. R., 101.

103. *See* 10 W. R., 101.

104. *See* 10 W. R., 101.

105. *See* 10 W. R., 101.

106. *See* 10 W. R., 101.

107. *See* 10 W. R., 101.

108. *See* 10 W. R., 101.

109. *See* 10 W. R., 101.

110. *See* 10 W. R., 101.

111. *See* 10 W. R., 101.

112. *See* 10 W. R., 101.

113. *See* 10 W. R., 101.

114. *See* 10 W. R., 101.

115. *See* 10 W. R., 101.

116. *See* 10 W. R., 101.

117. *See* 10 W. R., 101.

118. *See* 10 W. R., 101.

119. *See* 10 W. R., 101.

120. *See* 10 W. R., 101.

121. *See* 10 W. R., 101.

122. *See* 10 W. R., 101.

123. *See* 10 W. R., 101.

124. *See* 10 W. R., 101.

125. *See* 10 W. R., 101.

126. *See* 10 W. R., 101.

127. *See* 10 W. R., 101.

128. *See* 10 W. R., 101.

129. *See* 10 W. R., 101.

130. *See* 10 W. R., 101.

131. *See* 10 W. R., 101.

132. *See* 10 W. R., 101.

133. *See* 10 W. R., 101.

134. *See* 10 W. R., 101.

135. *See* 10 W. R., 101.

136. *See* 10 W. R., 101.

137. *See* 10 W. R., 101.

138. *See* 10 W. R., 101.

139. *See* 10 W. R., 101.

140. *See* 10 W. R., 101.

141. *See* 10 W. R., 101.

142. *See* 10 W. R., 101.

143. *See* 10 W. R., 101.

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153. *See* 10 W. R., 101.

154. *See* 10 W. R., 101.

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156. *See* 10 W. R., 101.

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160. *See* 10 W. R., 101.

161. *See* 10 W. R., 101.

162. *See* 10 W. R., 101.

163. *See* 10 W. R., 101.

164. *See* 10 W. R., 101.

165. *See* 10 W. R., 101.

166. *See* 10 W. R., 101.

167. *See* 10 W. R., 101.

168. *See* 10 W. R., 101.

169. *See* 10 W. R., 101.

170. *See* 10 W. R., 101.

171. *See* 10 W. R., 101.

172. *See* 10 W. R., 101.

173. *See* 10 W. R., 101.

174. *See* 10 W. R., 101.

175. *See* 10 W. R., 101.

176. *See* 10 W. R., 101.

177. *See* 10 W. R., 101.

178. *See* 10 W. R., 101.

179. *See* 10 W. R., 101.

180. *See* 10 W. R., 101.

181. *See* 10 W. R., 101.

182. *See* 10 W. R., 101.

183. *See* 10 W. R., 101.

184. *See* 10 W. R., 101.

185. *See* 10 W. R., 101.

186. *See* 10 W. R., 101.

187. *See* 10 W. R., 101.

188. *See* 10 W. R., 101.

189. *See* 10 W. R., 101.

190. *See* 10 W. R., 101.

191. *See* 10 W. R., 101.

192. *See* 10 W. R., 101.

193. *See* 10 W. R., 101.

194. *See* 10 W. R., 101.

195. *See* 10 W. R., 101.

196. *See* 10 W. R., 101.

197. *See* 10 W. R., 101.

198. *See* 10 W. R., 101.

199. *See* 10 W. R., 101.

200. *See* 10 W. R., 101.

201. *See* 10 W. R., 101.

202. *See* 10 W. R., 101.

203. *See* 10 W. R., 101.

MASTER AND SERVANT—continued.

16. Probability of

similar employment—Disobedience of orders—In-temperate language.—If a firm brings out persons to

passage, and does not stipulate for putting an end to

the contract on either side by specified notice, either

party is entitled to the full benefit of the contract in

before the expiration of the term of the engagement

without regard to the probabilities of his obtaining

similar employment. The dismissal of a servant is

justified by refusal to disobey lawful orders, and acts

of insubordination by the use of intemperate language

to his employers. *Ridd v. Scott* (Thomson & Co.

[2 Hyde, 172.

17. *Miscellaneous* of

servant—Right to portion of pay due at end of

month.—A servant is not liable for his misconduct to

forfeit such portion of his arrears of pay as had

become due to him at the expiration of a month's

service. The servant's misconduct may, have justified

his discharge in the middle of a month; if so, he is

entitled to no pay for any portion of such month.

BROOD MONNAY ROY v. SWANEY. 1 May, 287.

18. *Acquiescence in*

reduced rate of wages and stoppage of wages.—On

the 4th of July 1850 C engaged to come to India as

engine-driver for the East Indian Railway Company

on a progressive salary of Rs. 52-11-7 per month for

the first year, commencing July 4th, 1850; Rs. 4-8-8

for the second; Rs. 193-5-9 for the third; Rs. 218-7-10

for the fourth, with a free passage home; and the

company might at any time determine the engage-

ment by a six months' notice. The company gave

notice expired, the plaintiff was driving his train,

receiving (under his agreement) Rs. 174-8-8 per m. mth.

He continued to be so employed, and to receive pay

until the beginning of 1864, when he was employed

to drive passenger trains for the defendants, who

thereupon increased his salary. The plaintiff did not

assent to the increase, but claimed the balance of

salary due to him, as on the footing of his whole

service having been service under the original agree-

ment. His demand not being acceded to, he sued the

company to enforce it, and also for his past money

pay had been withheld; but he had not personally

during which month he had been suspended, and his

He also sued for his salary for May 1864,

in which month he had been suspended, and his

in his dismissal; that in such a case the servant

serves under a fresh contract, not at the rate he is

previously received by him, but at the rate he is

actually receiving; that a servant whose wages have

for one month been stopped during suspension for

10. *Abetment* of

instigation by master.—To make a master criminally

responsible for an offence committed by his servants,

it must be shown that there has been some act or

illegal omission on the part of the master whereby he

abetted the offence or some prior instigation or con-

spiracy. *Queen v. Shamsuddin*

[1 N. W., Ed. 1873, 310

11. *Indian Ports Act*

(XII of 1875), s. 22.—The servants of a contractor

who had engaged to discharge ballast from a ship

lying in the port of Calcutta, threw the ballast into

the river within the limits of the port, and thus

committed an offence under s. 22 of the Indian Ports

Act (XII of 1875). It did not appear that the

contractor had abetted the offence. Held that he

was not, in the absence of proof of abetment, liable

for the acts of his servants. *CHUNDI CHURN*

MOOREHEAD v. BARRETT

[1 L. R., 9 Cal., 849: 12 C. L. R., 508

12. *Action for harbouring or*

sheltering the servant of another.—Notice of

contract of service.—An action will not lie for the

mere harbouring or sheltering a person who is under

a contract of service to another, even with notice of

such contract of service. *Blake v. Lamson*, 6 N. H.

221, distinguished. *BRUKOWSKY v. THACKER*,

SEIK & Co.

13. *Wrongful dismissal, Suit for*

claim for wages.—Damage.—Every master and

employee has an undoubted right to dismiss his servant

or agent at any time for justifiable cause. After the

dismissal, whether wrongful or not, the servant cannot

claim wages. The remedy for wrongful dismissal is

by action for the damages sustained by the servant

in consequence of the breach of the master's contract

to employ him. *USUT KOONWAR v. JAYAR*

[3 W. R., 307

14. *Miscellaneous*

More venial faults are not sufficient, but there must

be something gross in the acts or breaches of duty

committed to warrant a summary dismissal. *HAY*

v. EASTERN BENGAL RAILWAY CO. 2 Hyde, 228

15. *Unskillfulness*

Involence—Justifiable dismissal.—Unskillfulness in

a servant is no ground for dismissal unless it amounts

to absolute incompetence. A summary instance of

insolence is not sufficient to justify a master in

dismissal. Where no time was

specified for a day's work in a contract, whereby

a company (the defendants) engaged the plaintiff, as

skilled mechanic, in the capacity of an engineer, and

“to make himself generally useful,” any work within

his capacity was held to form part of his duty.

By re-

turning when directed to work more than eight hours

a day without extra pay, plaintiff disobeyed reason-

able orders, and defendants were justified in dismissing

him. *WILLIAMS v. GREAT EASTERN HOTEL CO.*

[Cor., 76: 2 Hyde, 166

MASTER AND SERVANT—continued.

the plaintiff contracted to forfeit all arrears of wages, in default of giving the defendant Company 15 days' notice before leaving the defendant Company's service. It was held that s. 74 of the Contract Act did not apply to such a contract, and that the plaintiff, by leaving the service without giving the required notice, forfeited all the wages that had not become payable, though due to him. *Dumree or India Cotton Mills Co. v. NAFER CHUNDER ROY* [2 C. W. N., 687]

28. Monthly service —Wrongful leaving of employment, Consequence of —Right to wages.—When a monthly servant leaves his employment wrongfully in the course of the then current month, he loses all rights to wages for the time he had actually served during that month. *DUMREE BERNAR v. SERVANTS* [I. L. R., 13 Cal., 80]

MASTER OF SHIP.

Liability of—

See Bill of Lading . 13 B. L. R., 394
See Charter Party . 8 B. L. R., 340
[I. L. R., 7 Bom., 51]

Lien of, for wages and disburse-
ments.

See Bottomry-Bond . 5 B. L. R., 258
[6 B. L. R., 323
1 Ind. Jur., N. S., 303]

MAXIMS.
Actio personalis mortui cum
persona.

See Right of Suit—Survival or Right.
[I. L. R., 13 Bom., 677]

"bit."
"Actus curiæ neminem gravat."
The maxim "Actus curiæ neminem gravat" observed upon as requiring qualification.

Aedificare in tuo proprio solo
non licet quod alteri nocet.
See Custom
I. L. R., 10 All., 358

See Prescription—Tenants Privacy
[I. L. R., 10 All., 358
"Audi alteram partem."
See Cuv . I. L. R., 7 Mad., 319

Certum est quod certum reddi
potest.
See Mortgage—Form of Mortgage.
[I. L. R., 9 All., 158
"Contra non valentem agere non currit prescriptio."

See Litigation Act, 1877, Art. 144—
ADVERSE POSSESSION.
[I. L. R., 8 Bom., 585]

MAXIMS—continued.

"Debitum et contractus sunt nullius in loi."

See Jurisdiction—Cases of Jurisdiction - Cause of Action—Negotiable Instruments . 1 Mad., 436

De minimis non curat lex.
See Deposition . I. L. R., 13 Mad., 34

"Expressio unius est exclusio alterius."
See Deed—Construction . 10 Bom., 51

Expressum facit cessare tacitum.
See Transfer of Property Act, s. 119.
[I. L. R., 21 Mad., 69
"Ignorantia legis neminem excusat."

Liability of—
See Marriage Act, 1872, s. 18.
[I. L. R., 16 All., 212
Suit to set aside
illegal adoption.—A suit to set aside the adoption of a second son must be made within twelve years from cause of action. The maxim "Ignorantia legis neminem excusat" applies to questions of the Hindu law of inheritance and adoption, as well as to other laws. *RADHAKRISHN MAHAPATRE v. SREERAKSHN MAHAPATRE* . 1 W. R., 62

See as to this maxim SADBHO SINGH v. KISHORE
[3 N. W., 318
See contra, SOORBURKHONOR DABIA v. PETAHER DORRY . Marsh., 221; 1 Hay, 497
2. Presumption as to knowledge of law and limit of—Where loss of life and damage have resulted from the explosion of fireworks in a passenger carriage, the onus is on the railway company to show that they took due care to prevent the conveyance of fireworks in that manner, and not on the plaintiff to show that they did not. *Scott v. London Dock Co.*, 3 H. & C., 596; *Kearney v. London, Brighton and South Coast Railway Co.*, 12 R., 5 Q. B., 411; on appeal, 12 R., 6 Q. B., 759; *Burne v. Boadle*, 2 H. & C., 722; *Cotton v. Wood*, 8 C. B., N. S., 568; *Poulkes v. Metropolitan Railway Co.*, 12 R., 5 C. P. D., 157; *Wellfare v. London and Brighton Railway Co.*, 12 R., 4 Q. B., 693; and *Daniel v. Metropolitan Railway Co.*, 12 R., 3 C. P., 593; on appeal, 12 R., 5 B. & L., 49, referred to. *Per O'KIRKREAY, J.* in the Court below)—In the absence of evidence that the defendants had taken steps to prevent passengers from taking fireworks into the carriage, the Court cannot presume that the fireworks were taken clandestinely into the compartment, notwithstanding the fact that such carriage of fireworks is an offence, and that every one is presumed to know the law. The maxim that every man is presumed to know the law is limited to the determination of the civil or criminal liability of the person whose knowledge is in question. It cannot legitimately be made use of where, as in the present case) the parties are different and distinct

MASTER AND SERVANT—continued

conduct of religion, and instructed in their
 'as to the transmission as going to

MASTER AND SERVANT—continued

WATSON, J. W. 1968. The effect of the water level on the growth of the water hyacinth, *Eichhornia crassipes*, in a tropical wetland. *Journal of Ecology* 56: 1-11.

18 Incompetence
 Renders a true and just account—The plaintiff,

and put
the plant
of three
at 18-20

THE UNIVERSITY OF CHICAGO

period in the defendants' garden and was then

[illegible]

perence: as a student in a tea garden in that reasonably be asked to render and were not to be interpreted

50 ———— Justification Plea ———— of—Misconduct—Issues—Or as extra not on—In

institutions of mass education but not for the first time in their history -
institutions that would have been regarded as a supply
mentality with a different perspective.

LONGHURST & NEWBERRY SPINNING AND WEAVING COMPANY
I. L. R. 4 Rom, 576

[illegible]

conduct in that be pleaded as a good reason why a servant should not be allowed any more than his wages up to the 1st of January? DEANESSE : 8 N W, 130

23 ———— Wages, Suit for —————
that an employer is entitled to his wages notwithstanding subsequent misconduct, is not wrong in law
KALAN CHURN KAWAVER v. DEVOT COAL COMPANY
[21] W. R., 405

such a office as the manager has a right to demand.
FATHER CHURCHMAN & BENGAL COAT COMPANY
[21 W R., 405]

25 - Servant leaving after due notice, right of -
 office - where a servant leaves his master after giving due notice he was entitled to receive once all com of the office or master he serves. Thomas & [Manager of the Plovern Press
 12 Aveo, Wils, 1

33
 Monthly servant leaving
 without notice—*Forfeiture of wages*—(1) (2) (3)
 a servant who was on a 3 day notice period from
 the 1st Dec to the 3rd Dec 1877, and left
 his master's service on the 4th Dec 1877, without
 giving notice, it was held that the servant was
 entitled to be paid his wages up to the end of Decem-
 ber, but forfeited the wages payable to him in
 respect of his 3 day notice period.
 27
 10 Dom. 57
 27
Wages—Contract Act (13 of 1872), s 74—(1) (2) (3)
 27

MEASUREMENT OF LANDS—continued.

See SPECIAL OR SECOND APPEAL—ORDERS
SUBJECT OR NOT TO APPEAL.

[I. L. R., 22 Cal., 477
I. L. R., 25 Cal., 34
I. L. R., 26 Cal., 556

1. "Jurisdiction"—Valuation of suit—*Hengal Kent Act, 1869*, s. 37.—The word "jurisdiction" in Bengal Act VIII of 1869, s. 37, refers not merely to local jurisdiction, but also to jurisdiction as to value. *PARKE MONUN MOOKERJEE v. RAJ KRISHNO MOOKERJEE*. 20 W. R., 385

2. Suit to measure land—*Bengal Rent Act, 1869*, s. 37.—A suit to establish a zamindar's right to measure land must be brought in the Court which would have had jurisdiction in a suit to recover such land. *SHRINATH GOONDEE v. DEBIA v. BUTOMAK GOONDEE*. 24 W. R., 423

3. Right to measure—*Proprietor of estate—Bengal Rent Act, 1869*, s. 37 (*Beng. Act VI of 1862*, s. 9.—*Held* by the majority of the Court (SETOON-KAR, J., *dissent*) that a proprietor of an estate is entitled, under s. 9, Bengal Act VI of 1862, to measure the lands of any subordinate tenure within the limits of his estate, whatever the character or size of the tenure or the amount of rent paid in respect of it. *RUN BANADORE SINGH v. MITROODUN TEWAKER*. 8 W. R., 149

4. *Zamindar*—*Bengal Rent Act, 1869*, s. 37 (*Beng. Act VI of 1862*, s. 9).—There must be some express restriction before a zamindar can be precluded from the benefit given him by s. 9, Bengal Act VI of 1862, of measuring the lands in the possession of his raiyats. *OMTA CHURN BISWAS v. SHIRNATH BAGCHER* 8 W. R., 14

5. *Proprietor in possession—Bengal Rent Act, 1869*, s. 37 (*Beng. Act VI of 1862*, s. 9).—Under s. 9, Bengal Act VI of 1862, the proprietor who can claim to measure must be a proprietor in possession, and not a proprietor out of possession, although he may be able to prove his title. The only question which the Collector has to try under that section is, which person is in possession, and his decision is final only as to possession and not as to title. The unsuccessful party has a right to sue in the Civil Court for a declaration of his right. *KAREE DASS NUNDEE v. RAJGOVINDER DUTT* [6 W. R., Act X, 10

6. Right of proprietor to survey and measure—*Bengal Rent Act, 1869*, s. 37.—A proprietor of an estate or tenure has a right to make a general survey and measurement of the lands comprised in his estate, under the provisions of s. 37 of the Rent Act, without proving that he is in receipt of the rents, there being nothing in law which prevents him from making such a survey or measurement as is contemplated by ss. 26 and 37 merely because his estate happens to be sub-let to a number of tenure-holders. The only exception made is where there is a special agreement to the contrary. *KRISHNA COOMAR GHOSH v. KRISHNA COOMAR GHOSH* [I. L. R., 7 Cal., 684; 9 C. L. R., 444

MAXIMS—continued.

"Optimus legis interpretis rerum usus."

See LANDLORD AND TENANT—EJECTMENT—GENERALITY. 13 B. L. R., 416

tudo. Optimus legis interpretis consuetudo. See MAXIMADAM, JURISDICTION OF. [I. L. R., 14 Bom., 372
Quod fieri non debuit, factum valet.

See CASES UNDER HINDU LAW—ADOPTION—DOCTRINE OF FACTUM VALT AS RESPECTS ADOPTION. See HINDU LAW—ADOPTION—REQUISITES FOR ADOPTION—AUTHORITY. [I. L. R., 12 All., 328
See HINDU LAW—ADOPTION—WHO MAY OR MAY NOT BE ADOPTED. [I. L. R., 14 All., 67
I. L. R., 21 All., 460
I. R., 26 I. A., 113

See HINDU LAW—MARRIAGE—RIGHT TO GIVE IN MARRIAGE, ETC. [I. L. R., 11 Bom., 247
I. L. R., 22 Bom., 812
See MADRAS TOWNS IMPROVEMENT ACT III OF 1871, ss. 61, 62. [I. L. R., 7 Mad., 65
Respondent superior. [I. L. R., 20 Bom., 394
Sic utere tuo ut alienum non laedas.

See CUSTOM. I. L. R., 10 All., 358
See PRESCRIPTION—EASEMENTS—PRIVATE. [I. L. R., 10 All., 358
Volenti non fit injuria. See NEGLIGENCE I. L. R., 13 Bom., 183

MEASUREMENT OF LANDS.

See APPEAL—MEASUREMENT OF LANDS.

See LEASE—CONSTRUCTION. [I. L. R., 14 Cal., 99
I. R., 13 I. A., 116

See RES JUDICATA—ESTOPPEL BY JUDGMENT. I. L. R., 3 Cal., 271
[3 C. L. R., 74

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS. [I. L. R., 10 Cal., 507
Power of Ameen in—

See PENAL CODE, s. 186. [I. L. R., 22 Cal., 286

Question of standard of— [I. L. R., 17 Cal., 277
See BENGAL TENANCY ACT, s. 158.

MAXIMS—continued

2 Publication of Government order, Resumption as to—Three being

3 Revenue cases—
As in civil suits so in revenue cases all things must be presumed to have been correctly done. It is not necessary to inquire into the instructions which the agents receive and until the contrary is shown, the parties must be held to have been properly represented and to be bound by the decisions. *ANAN-OLAN v. JESODA* 23 W. R. 79

4 Sale in execution for arrears of rent—Where a tenure is sold in execution of a decree for arrears of rent and a certificate of sale is granted by the Collector it must be presumed that all the ordinary proceedings relating to the payment of the purchase money have been fulfilled. *PKAZOODDERY BHOOYA v. SHUKRAVERMA* 12 W. R. 608
See *MAH BUNHA ROY JYADAN v. GOPIY DODS* 16 W. R. 291
HIRAGER

5 Certificate of sale—Proof of title without production of certificate. A plaintiff who has purchased land at a sale in execution of a decree is not bound to prove a title. If it is proved otherwise not recorded—Where an estate which was subject to a mortgage was attached in execution but was leased out to fresh tenants and re-tenants between the

KURANAYAKI I. L. R. 11 Mad. 206
8 Transfer of estate—Where an estate which was subject to a mortgage was attached in execution but was leased out to fresh tenants and re-tenants between the

9 and a decree—Held that the lower Court should have assumed it at the sale transfer was regular and the sale good and that all proceed with it if the attached land was not wanted. *MAHARAJA v. JYADAN* 125 W. R. 323

10 Proceedings—Where irregularities had clearly occurred in proceedings the Court refused to permit a person to be made a party and was therefore bound by them. *CHANDRAN MANOHAR ZENKES* 23 W. R. 307
HIND v. MANOHAR JAKOON

MAXIMS—continued
from him EAST INDIAN RAILWAY Co. v. KALIT DASS MOOKHERJEE I. L. R. 26 Cal. 465

“In part delicto potior est conditio possidentis”

See CONTRACT—WAGERING CONTRACTS
I. L. R. 9 Bom. 358

See ESTATE—ESTATE BY DEEDS AND OTHER DOCUMENTS
I. L. R. 1 AU. 403

“No one can be Judge in his own cause”

See CONTRACT—CONDITIONS PRECEDENT
I. L. R. 5 Mad. 173

Novus constitutio futuris formam imponere debet non praeteritis

See STATUTES CONSTRUCTION OR
5 Moore’s A. 109

1 “Nullum tempus occurrit regi” *Hindia*—This maxim is a rule of Hindu law and is not applicable as well as English law. *VIKRAMA BAPU v. GOVERNMENT OF BOMBAY* 12 Bom. Ap. 1

2 Legislation in Bombay Presidency—The extent to which the maxim “nullum tempus occurrit regi” has been restricted by legislation in the Presidency of Bombay considered. *VIKRAMA BAPU v. GOVERNMENT OF BOMBAY* 12 Bom. Ap. 1

3 “Omnia praesumuntur contra spoliatorem”

GOVERNMENT OF BOMBAY v. HANUMANT MOY 12 Bom. Ap. 235

GOVERNMENT OF BOMBAY v. HANUMANT MOY 12 Bom. Ap. 235

“Omnia praesumuntur contra spoliatorem”

See ESTATE—ESTATE BY DEEDS AND OTHER DOCUMENTS
3 Bom. A. C. 116

See ESTATE—ESTATE BY DEEDS AND OTHER DOCUMENTS
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3 Bom. A. C. 116

See ESTATE—ESTATE BY DEEDS AND OTHER DOCUMENTS
3 Bom. A. C. 116

See ESTATE—ESTATE BY DEEDS AND OTHER DOCUMENTS
3 Bom. A. C. 116

MEASUREMENT OF LANDS—continued.

in his estate, and that he is unable to measure because he is unable to ascertain them. If his averments are objected to, and the Collector proceeds without inquiry, the proceedings are invalid, and without jurisdiction. An applicant under the above section must be the proprietor of the estate, and not a shareholder only in the proprietary body. MAHOMED RAHADOOR MOJOMDAN v. RAJ KISHEN SING [15 W. R., 522; 10 B. L. R., 401 note]

30. ————— *Bengal Rent Act, 1869, s. 38 (Beng. Act VI of 1862, s. 10)*—

are, what lands are in their occupation, and what rents they have to pay, but not to enable him to enhance the rents of the rayats; or resume rent-free lands by throwing the onus on the lakhrajdar to prove his rent-free holding. SHARONA PERSHAD GANGOOLY v. RAJ MOHUN ROY. 18 W. R., 185

31. ————— *Necessary evi-*

for or by the Civil Court. JAMALOODDEEN HOSSEIN v. RAMADHIN MISSEER. 24 W. R., 331

Affirmed on appeal under the Letters Patent. [25 W. R., 136]

32. ————— *Right of auction-*

stances, prove such liability. ABDUL HAKEEM v. MITTANUND KOONDGOO. 21 W. R., 103

33. ————— *Bengal Rent Act,*

SURE MISSEER v. CROWDY. 15 W. R., 243

MEASUREMENT OF LANDS—continued.

34. ————— *Bengal Rent Act, 1869, s. 38 (Beng. Act VI of 1862, s. 10)*—*Duty of Collector—Rate of rent, Determination of.*—The Collector's duty under Bengal Act VI of 1862, s. 10, is to ascertain the actually existing rates of rent payable by the rayat to the zamindar; he has no jurisdiction to assess the rent at enhanced rates. CROWDY v. OMRAO SINGH. 22 W. R., 478

RUTTOO SINGH v. CROWDY [22 W. R., 477 note]

NEEM CHAND SAHOO v. RAM GHOLAM SINGH [24 W. R., 424]

35. ————— *Bengal Rent Act, 1869, s. 38 (Bengal Act VI of 1862, s. 10)*—*Power of Collector—Question of title.*—On an application to measure the lands of a particular estate, the Collector is not empowered by Bengal Act VI of 1862 to determine summarily the character of every holding upon that estate, but only to inquire how and by whom every portion of land therein is held, and what

been cast by his proceedings. WISE v. LAKHOO KHAN. 18 W. R., 60

Held that the proceedings of the Collector were irregular, as he had acted without jurisdiction, and that they were not binding on the defendants for the purpose of showing the rate at which rent was payable by them. BABA CHOWDURY v. ABEDOODDEEN MAHOMED. I. L. R., 7 Calc., 69

S. C. RUFENESSA BIDI CHOWDRAM v. ABED- UDDIN MAHOMED. 8 C. L. R., 73

had not made a special application to the Collector, under s. 38, Act VIII of 1862, for the determination and record of tenures, under-tenures, and rates of rent in the land in suit.—Held that, in the absence of special order of the Collector fixing the rates of rent, there was no legal order which could be considered

MEASUREMENT OF LANDS—continued

land, and to file a khablat and fixing the time at fifteen days," otherwise the excess land to be settled with others,—the khablatdar measured the howla and accreted chur will out notice to the tenants

would take khas possession. In a suit, amongst other things for assessment of rent of the excess land, —Held that the tenants were not bound by the measurement made by the khablatdar in their absence
RAM COOMAR GHOSH v. KATI KRISHNA TAGORE

[L R., 13 I. A., 116 I L R., 14 Calc., 89

Procedure—Inquiry and est.

R., 40 note 10 R. R., 544, 101 OWEA
SIRKAR v. JOGUT KISHORE ASHAPAKHA
[13 C L R., 203

49. — Proof of conduct of proceedings in accordance with Act—Bengal Rent Act, 1869 s. 39 (Beng Act VI of 1862 s. 17)
—Pro
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unless it is shown beyond a doubt
ings of the revenue officers referred to have been conducted in strict accordance with the terms of that section
DINOBENDUO CHOWDHURY v. DINOVATH MOOKERJEE
19 W. R., 168

50. — Notice—Bengal Rent Act, 1869 s. 39—Ex-parte orders—Proceedings for measurement of land—In proceedings for s. 39 of the Bengal Rent Law, Act VIII of

[I L R., 8 Calc., 818 I. A. C. L. R., 100

51. — Notice—If a
of 1869
received notice JADUB CHUNDER HALDER v. FRA
WAKER LUSHKUR
Marsh., 498

MEASUREMENT OF LANDS—continued.

S C EYWAER LUSHKUR v. JADUB CHUNDER HALDER
3 May, 589

suit for rent, where the quantity of land for which rent is claimed is in dispute, and the landlord produces as evidence a khasra or appraisement of the land, it is not necessary for him to show that the estimate was drawn up in presence of the defendant and was acknowledged by him. It will be sufficient if the defendant (a dambandi tenant) had notice when the khasra was about to be made
HURRI NARAIN SINGH v. BELJEET JHA
24 W R., 125

53. — Attendance of witnesses—Inquiry—Bengal Rent Act 1869, ss. 38, 40—Order that fees have lapsed—The Collector, in proceedings for measurement of lands under s. 38 of Bengal Act VIII of 1862 cannot be

NATH ROY I L R., 6 Calc., 673, 8 C L R., 50

54. — Right to appeal—Bengal Rent Act 1869 ss. 38, 39 According to the procedure prescribed in Bengal Rent Act VIII of 1862 as 38 and 39 until the Collector has entered upon his inquiry there is but one party concerned, and no proceeding in the shape of a suit or appeal can find place until after the Collector has completed his measurement and record
CHOWDHURY v. GOUR
DHAN ROY
22 W R., 491

object to the proceeding of the Collector under s. 10 of Act VI of 1862 the proper course for the raiyat is to appeal to the District Judge, and not wait until the zamindar brings a suit for arrears of rent on the basis of the rate fixed by the Collector
HURRI BANPUR PATWARI v. RADHA CHOWDHURY
[25 W R., 346

55. — Decision of Collector—7 C

RADHABHARTY GHOSH v. RADHA
PANDITA
7 C L R., 380

WATSON
3 W. R., Act X., 100

MEASUREMENT OF LANDS—continued.

final, and the matter was open to the Civil Court.
JAMALOODDEEN HOSSEIN v. RAMADHURN MISSEER

[25 W. R., 136

affirming on appeal under the Letters Patent, S. C.

[24 W. R., 331

38. ———— *Duty of Collector—Bengal Rent Act, 1869, s. 33—Delegation of powers by Collector to Ameen.*—In a suit under s. 38, the Collector cannot delegate his powers to an Ameen or accept absolutely without reservation the whole report of that officer, and order assessment in accordance with the rates found by him; such report being only a part of the evidence to be taken into consideration. SHETUL SHAIKH v. HILLS

[24 W. R., 184

39. ———— *Ameen deputed to measure, Duty of—Bengal Rent Act, 1869, s. 38 (Beng. Act VI of 1862, s. 10).*—An Ameen deputed to make a measurement under the provisions of s. 10, Bengal Act VI of 1862, is bound to record the state of things as actually existing, and has no business to record what he thinks ought to be the rates. If, however, the Ameen, or the Collector superintending his proceedings, does any act not in conformity with this section, the remedy for any party dissatisfied is to appeal to the Civil Court within the time and in the manner prescribed by Act X of 1859. BALA THAKOOR v. MEGHBUHN SINGH . . . 14 W. R., 269

40. ———— *Beng. Act VIII of 1869, s. 38—Power of Collector.*—Where an application is made to a Collector under Bengal Act VIII of 1869, s. 38, for the measurement of certain lands without any "special application" to him to determine the rates of rent, any proceedings regarding the rates of rent are inadmissible. CROWDY v. POORUN SINGH . . . 22 W. R., 480

41. ———— *Resistance to measurement—Right to intervene—Intermediate tenant—Bengal Rent Act, 1869, s. 38 (Beng. Act VI of 1862, s. 10).*—The fact of a measurement and jamabandi having been effected under the provisions of Bengal Act VI of 1862, s. 10, cannot deprive an intermediate tenant of the right of intervening under Act X of 1859, s. 77, nor is the intervenor deprived of that protection, even though Act X no longer exists. MUDHOO SOORUN SHAHA v. GOPAL SHAIKH . . . 22 W. R., 503

42. ———— *Interference by third party—Duty of Collector—Bengal Rent Act, 1869, s. 38 (Beng. Act VI of 1862, s. 10).*—Where the progress of a measurement under s. 10, Bengal Act VI of 1862, is interfered with by a third party claiming the land, the proper course for the Collector is to hold his hand, leaving it to the parties to seek their remedy in the Civil Court. He cannot, however, make any order which will prevent the intervenor coming under s. 77, Act X of 1859. WISE v. BANSEE SHAHA . . . 16 W. R., 51

43. ———— *Objections to measurement—Bengal Rent Act, 1869, s. 38—Power of Collector in dealing with objections to measurement.*—*Quere*—After having commenced proceedings under s. 38 of Bengal Act VIII of 1869, has a Collector power

MEASUREMENT OF LANDS—continued.

to refer some of the objections taken to one Deputy Collector and some to another? OMED ALI v. NITYANUND ROY . . . 24 W. R., 171

44. ———— *Bengal Rent Act, 1869, s. 38 (Beng. Act VI of 1862, s. 10)—Objections to measurement proceedings.*—Where a measurement under Bengal Act VI of 1862 was completed without any objections having been made to it by the raiyats while in progress, it was held that it was not competent for the Judge in appeal to set aside the proceedings on objections made subsequently. GOLUCK KISHORE ACHARJEE v. KESHA MAJHEE

[15 W. R., 23

45. ———— *Measurement of chur lands according to agreement—Effect of error as distinguished from fraud—Omission to object to measurement at time it was taken.*—A superior owner of chur land, and his tenants, who held it in "howladari" tenure, agreed, with reference to alluvion and diluvion, that the chur should be measured from time to time, on notice, and that, unless the tenants should give a separate "dail kabuliati" for the land found to be accreted, the superior owner should take possession of it. A measurement by the superior owner was made on notice to the tenants and *bona fide*; but it was incorrectly made,—the tenants, however, raising no objection at the time. They afterwards, when a suit was brought against them by the superior owner for possession of alleged accreted lands, set up the defence that the measurement had been made in their absence and was incorrect. Held by the Privy Council that the tenants could not defeat the suit merely on the ground of the incorrectness of the measurement, there being no fraud; but that they were not entitled to ask the Court to decide what the amount of the property was which the plaintiff was entitled to recover. ALIMUDDIN v. KALI KRISHNA TAGORE

[I. L. R., 10 Calc., 895

46. ———— *Measurement of waste lands—Bengal Rent Act, 1869, s. 38—Bengal Civil Courts Act (VI of 1871), s. 22—Appeal.*—An application for the measurement of a whole estate under s. 38 of Bengal Act VIII of 1869 cannot be granted where waste lands in that estate have been brought into cultivation by various raiyats, and the landlord is unable to ascertain which of the raiyats have appropriated such waste lands as part of their jotes. Before a measurement can be ordered under that section, it is necessary to establish by evidence the facts set out in the petition for measurement and to show that the lands sought to be measured are known, but that the tenants liable to pay rent in respect of such lands are unknown. LALLA CHIEPR LAL v. RAMDHUNI GOPE . . . I. L. R., 13 Calc., 57

47. ———— *Measurement of chur lands—Accretion to tenure—Measurement made in absence of tenants—Notice.*—Where a kabuliati stipulated that on the accretion to a certain howla of any new cultivable chur, a fresh measurement should be made of the chur and howla, and that excess rent should be paid for the excess land at a stipulated rate up to five drones, and at pergunnah rates for the

MERCHANT SEAMEN'S ACT (I OF 1859)

See MAGISTRATE, JURISDICTION OF—
SPECIAL ACTS—MERCHANT SEAMEN'S
ACT, 1859 . 4 Mad, Ap, 23

[7 Mad, Ap, 33
See MERCHANT SHIPPING ACT 1854 s 24;
[8 Mad, 85

See SHIPPING LAW—MARITIME LIEN
(2 Hyde, 273
6 Bom, O C, 138

43 & 44 Vict., c 16, s 10 do s not affect the
liability of seamen in Calcutta to imprisonment for
offences under s 83 cls 1 and 2, of Act I of 1859
BRUCE & CROWN . I L R, 12 Calc, 438

s 111.

See EVIDENCE—CRIMINAL CASES—DEPOSITIONS
1 Hyde, 195

ss 201, 202

See SHIPPING LAW—CERTIFICATES
1 Mad, 270

MERCHANT SHIPPING ACT, 1854 (17 & 18 VICT, C 104)

ss. 24, 28—*Applicability of Act to India as regards the rules of measurement—Act XIX of 1838, ss 4, 13—Act X of 1841 Temporary additions to open vessels—"Strake," Meaning of*

purpose of protecting the cargo from the sea
During this voyage the vessel was insured by a

or otherwise, found an increase of 27 tons in the
burthen of the vessel by reason of the temporary
structure. This change in the burthen of the vessel
having been made the accused was prosecuted, under
s 13 of Act XIX of 1838, for omitting to register the
vessel anew, and obtain a fresh certificate of registry
under s. 4 of the Act. The accused was convicted
and sentenced to pay a fine of Rs 12. *Held*, reversing
the conviction and sentence, that, there being no
express provision applicable to temporary additions
to open vessels either in the Indian Acts (XIX of 1838

MERCHANT SHIPPING ACT, 1854 (17 & 18 VICT, C. 104)—continued

and X of 1841) or in the Merchant Shipping Act of
1854 the rules of measurement issued in 1573 by
the Marine Department were *ultra vires*, so far as
they insisted on the measurement being taken from

(I L R, 14 Bom, 170

ss 43, 68

1 Non-registration of ship—

SHIP CHUNDER DOSS & COCHRANE
(Hourke, O C, 388

Shipping Act AHMED MAHOMED & LUNIN
(1 Ind, Jur, N S, 95

3 Shipping Master, Power of—

Master has no discretion in the matter but is bound

(Ind Jur, N S, 371

ss 63, 65

See SHIP, SALE OF
(3 Ind Jur, N S, 251
1 Ind Jur, N S 263

RE LEWIS . 3 Bom, O C, 12

s 243.

See OFFENCE OF HIGH SEAS

(I L R, 21 Calc, 793

Act I of 1839, s 53, cl 5—*Disobedience of commands by sailors*—The Merchant Shipping Act, 1854, 17 & 18 Vict c 104, s. 243 (b), has no application to British India. The Act applicable to cases of continued wilful disobedience of lawful commands by sailors is Act I of 1839.

MEASUREMENT OF LANDS—continued.

58. ———— *Bengal Rent Act, 1869, s. 11*—Standard pole of measurement.—The standard pole of measurement alluded to in s. 11 must mean a standard officially known, i.e., known to the Collector. *SURESH SHANKAR v. HILLS* [24 W. R., 184

59. ———— *Power of Collector*—The Collector is the depository of the standard pole of each pergunnah; and it is exclusively within his province to declare what the standard of such pole is. *TARUCKNATH MOOKERJEE v. MEYDEH BISWAS* . . . 5 W. R., Act X, 17

60. ———— *Power of Collector to determine standard of measurement*—*Bengal Rent Act, 1869, s. 41 (Beng. Act VI of 1862, s. 11)*.—In an application for assistance to measure the land of a raiyat under s. 9, Bengal Act VI of 1862, the Collector has no power under s. 11 to fix with what pole the measurement is to be made, but such questions are to be reserved for after-proceedings, when any action is taken upon the result of such measurement. *RAMANATH BAKSHI v. MUGHIAM PARAMANKE* . . . 3 B. L. R., Ap., 63

S. C. ROMANATH BAKSHI v. DHOOKHEE SHAM BHUGYA . . . 11 W. R., 510

61. ———— *Power of Collector*—*Bengal Rent Act, 1869, s. 41 (Beng. Act VI of 1862, s. 11)*.—The Collector has no jurisdiction in an application by the zamindar under s. 9, Bengal Act VI of 1862, for assistance to measure the holding of his raiyat, to fix the standard of the pole with which the land is to be measured. *Seemle*—If the application had been under s. 10 of the Act, the Collector would have had jurisdiction to declare the length of the standard pole. *BRAJA KISHOR SEN v. KASIM ALI* . . . 3 B. L. R., Ap., 76

S. C. BROJO KISHORE SEN v. KASSIM ALI [11 W. R., 562

62. ———— *Power of Collector*—*Bengal Rent Act, 1869, s. 41 (Beng. Act VI of 1862, s. 11)*.—*Per KEMP, PHEAR, MITTER, and HONHOUSE, J.J.*—When the right of a proprietor to make, under s. 9, Bengal Act VI of 1862, a measurement of a tenure is disputed, solely on the ground that the pole with which the measurement is attempted to be made is not the standard pole of measurement of the pergunnah, as provided in s. 11, and the parties are at issue as to what is the length of the standard pole, the Collector has jurisdiction to inquire into and decide as to the true length of the standard pole. *COTCH, C.J., and BAXLEY and JACKSON, J.J., contra. MANMOHINI CHOWDHURAI v. PREMNAND ROY*

[6 B. L. R., 1: 14 W. R., F. B., 4

63. ———— *Power of Judge on appeal*.—A Judge on appeal has power under s. 9, Bengal Act VI of 1862, s. 9, to declare by what standard measurements are to be made. *MAKINTOSH v. KOYLAS CHUNDER CHATTERJEE* [W. R., 1864, Act X, 59

MEASUREMENT OF LANDS—concluded.

64. ———— *Bengal Rent Act, 1869, s. 41 (Beng. Act VI of 1862, s. 11)*—*Measuring rod of tuppah*.—S. 11, Bengal Act VI of 1862, does not preclude the use of the standard measuring rod of a tuppah. *SURBUND PANDEY v. RUCHIA PANDEY* . . . W. R., Act X, 32

MEDAL.

——— Taking pawn of, from soldier.

See ARMY DISCIPLINE ACT, 1881, s. 156.
[I. L. R., 10 Mad., 108

MEDICAL EXAMINATION.

See HINDU LAW—MARRIAGE—RESTRAINT ON, OR DISSOLUTION OF, MARRIAGE.
[I. L. R., 1 All., 549

MEDICAL OFFICER.

——— Remuneration for professional attendance.—The amount of remuneration for the professional attendance of a medical officer on the family of a public servant in the absence of an express agreement should be determined with reference to the circumstances in each case, and the principle adopted by the Judge in estimating the amount, that reference must be had not only to present means, but to prospects, without considering other matters, was not correct. *Held*, under the circumstances of the case, that one-fifth of the monthly income of the defendant was the fair amount to which the plaintiff was entitled for his professional attendance for the year. *RAWLINS v. DANIEL* . . . 2 Agra, 58

MERCANTILE USAGE.

See CUSTOM . . . 7 Moore's I. A., 263
[I. L. R., 11 Mad., 459
I. L. R., 14 Mad., 420

MERCHANDISE MARKS ACT (IV OF 1889).

See CASES UNDER TRADE MARK.

——— s. 2, cl. 4—*Penal Code (Act XLV of 1860), s. 486*—*Selling books with counterfeit property mark—Goods*.—Books are the subject of trade, and are goods within the meaning of s. 2, cl. (4), of the Indian Merchandise Marks Act (IV of 1889); therefore, when a person sells books with a counterfeit property mark, he commits an offence under s. 486 of the Indian Penal Code. *KANAI DAS BAIRAGI v. RADHA SHYAM BASACK* [I. L. R., 26 Calc., 232

——— ss. 6 and 7.

See CRIMINAL PROCEDURE CODES, s. 403.
[I. L. R., 23 Calc., 174

MERGER—continued.**2 ——— Collateral securities—Promis-**

B's securing the debt by assigning to him, by way of mortgage, his (*B's*) interest in certain landed property. *Held* that *A* could proceed in a summary way upon the note, notwithstanding the mortgage.

RANGOPAL LAW v BLAQUIERE

[1 B. L. R., O. C., 35]

3. ——— Purchase by patnidar of zamindari rights—Cessation of rent as patnidar—

The patnidar of a mahal which formed a portion of a
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[3 C. L. R., 159]

R on the 1st January 1875. In 1885 *R* sued the sons of *H* and *V* to recover principal and interest due under his mortgage bond. *V* pleaded that, as *R* had bought *R's* share in items 1 and 2, subject to the mortgages created by him, *R* *N's* rights as mortgagee were merged in his rights as purchaser. *Held* that the claim of *R* was not merged.

VENKATA v RANGA

I. L. R., 10 Mad., 160

5. ——— Patni interest, Merger of, in

the zamindari interest. *A* and *B*, two joint zamindars, having brought a patni within their zamindari to sale for arrears of rent purchased it themselves. During the existence of the patni a dar-patni had been created, of which *C* was in possession, and instituted a suit against *C* to recover arrears of rent

was registered under the provisions of Bengal Act

the case, *On* appeal from the decision of the District Court, the plaintiff. In answer to the suit, *C* contended that the

MERGER—concluded.

non-registration of *B's* interest precluded the plaintiffs from maintaining the suit at all, *A's* share not being specified, having regard to the provision of s 78 of the Act. The lower Appellate Court having dismissed the suit on this latter ground (among others).—*Held* on second appeal that the right of the plaintiffs as patnidars did not merge in their right as zamindars, and that the Land Registration Act had therefore no application to the case, the plaintiffs being entitled to maintain the suit and particulars JIBANTI NATH KHAN v GOKUL CHUNDER CHOWDARY I. L. R., 19 Calc., 760

MESNE PROFITS.

Col.
1. RIGHT TO, AND LIABILITY FOR 5855

2 ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS 5861

3. MODE OF ASSESSMENT AND CALCULATION 5870

See CASES UNDER DECREE—CONSTRICTION OF DECREE—MESNE PROFITS

See CASES UNDER DECREE—FORM OF DECREE—MESNE PROFITS

See HINDU LAW—STRIDHAW—DESCRIPTION AND DEVOLUTION OF STRIDHAW [3 B. L. R., A. C., 121]

See CASES UNDER INTEREST—MISCELLANEOUS CASES—MESNE PROFITS.

See CASES UNDER LIMITATION ACT, 1877, ART 109

See RIGHT OF SUIT—MESNE PROFITS [1 Ind., Jur., O S., 83
2 C. W. N., 43
3 C. W. N., 79]

Suit for—

See RELINQUISHMENT OF, OR OMISSION TO SUE FOR PORTION OF CLAIM

[5 B. L. R., 184, 187 note
21 W. R., 223
22 W. R., 421
25 W. R., 113
I. L. R., 3 All., 513]

See RES JUDICATA—CASES OF ACTION. [2 B. L. R., S. N., 16; 10 W. R., 486
Marsh., 93
O W. R., 594]

See SMALL CAUSE COURTS—MORTGAGE—JURISDICTION—MESNE PROFITS

[3 N. W., 19
I. L. R., 18 C. L., 319
I. L. R., 22 Mad., 100, 103 note]

See CASES UNDER SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS—MESNE PROFITS.

MERCHANT SHIPPING ACT, 1854 (17 & 18 VICT., C. 104)—concluded.

s. 31, cl. 5 (c). IN THE MATTER OF THE PETITION OF REARDON . . . 8 Mad., 85
s. 257.

See OFFENCE ON HIGH SEAS.

[I. L. R., 21 Calc., 782

Trial of British seamen for offences committed on British ship on the high seas—Procedure at such trial—Murder—Admiralty Courts—British seamen on British ship—Letters Patent, High Court, 1865, cl. 26—Case certified by Advocate-General.—A British seaman who stood charged with the murder of a fellow-sailor on board a British ship on the high seas was tried by a Judge of the High Court under the Code of Criminal Procedure; the chief evidence against the prisoner being that given in the depositions of the captain and second officer of the ship, taken on commission; this evidence was admitted in evidence, and the prisoner was convicted and sentenced. It was objected that, under s. 257 of the Merchant Shipping Act of 1854, the prisoner ought to have been tried in every respect as though the trial had been held at the Central Criminal Court in London, and that the law of evidence to be applied was that prevailing in England. *Held*, on a case certified by the Advocate-General under cl. 26 of the Letters Patent, that the prisoner had been properly tried according to the ordinary practice of the High Court, and that the evidence was admissible against him. *QUEEN-EMPEROR v. BARTON*

[I. L. R., 16 Calc., 238

MERCHANT SHIPPING ACT, 1855 (18 & 19 VICT., C. 91).

s. 21.

See OFFENCE ON HIGH SEAS.

[I. L. R., 21 Calc., 782

MERCHANT SHIPPING ACT (25 & 26 VICT., C. 63).

s. 3.

See SHIP, SALE OF.

[I. L. R., 21 Mad., 395

(IV of 1875), ss. 3, 5, 6, 7, and 18—*Jurisdiction, Admiralty Courts—Board of Trade certificates—Incompetency or misconduct of holder—Statement of grounds.*—The powers conferred on Courts of Admiralty by s. 5 of Act IV of 1875, of investigating charges of incompetency or misconduct against the holders of Board of Trade certificates, is totally distinct from the power of enquiry into wrecks or casualties conferred on tribunals by the same Act. It is not correct to say that all the sections in Ch. II of Act IV of 1875 subsequent to s. 5 apply only to inquiries under that section; nor that the Courts mentioned in that section are the only Courts that can cancel a Board of Trade certificate, or report so as to enable the Local Government to cancel its own certificate. A special

MERCHANT SHIPPING ACT (25 & 26 VICT., C. 63)—concluded.

Court inquiring into a casualty under s. 3 has power, if all the provisions of the Act are duly complied with, to cancel a Board of Trade certificate, or to make a report to the Local Government, upon which the Government may cancel its own certificate under s. 18. In investigating charges of incompetency or misconduct under s. 5 of Act IV of 1875, it is not necessary, in order to give the Court jurisdiction, that such incompetency or misconduct should have occurred on or near the coasts of India. What is a sufficient "statement of grounds" within the meaning of ss. 6 and 7 of Act IV of 1875? IN RE THE "AYA" AND THE "BRENNILDA." GOVERNMENT OF BENGAL v. WHITTARD

[I. L. R., 5 Calc., 453; 5 C. L. R., 307

s. 5—Proof of Board of Trade certificate.—An investigation under Act IV of 1875, s. 5, into charges of incompetency or misconduct cannot proceed unless the person whose competency or conduct is to be inquired into has been proved to be the holder of a certificate granted by the Board of Trade. IN THE MATTER OF A COLLISION BETWEEN THE "AYA" AND THE "BRENNILDA"

[I. L. R., 5 Calc., 568; 5 C. L. R., 331

MERCHANTS' LAW OF

See ENGLISH LAW . . . 13 W. R., 420

MERGER.

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWERS OF COURT.
 [I. L. R., 7 Calc., 82

See LIMITATION ACT, 1877, ART. 47.
 [I. L. R., 18 Bom., 348

See MORTGAGE—MARSHALLING.
 [I. L. R., 13 Mad., 383
 I. L. R., 15 Mad., 268

See MORTGAGE—REDEMPTION—REDEMPTION OTHERWISE THAN ON EXPIRY OF TERM . . . I. L. R., 14 Bom., 78

See MORTGAGE—SALE OF MORTGAGED PROPERTY—MONEY-DECREES ON MORTGAGES . . . I. L. R., 9 All., 23

See CASES UNDER MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS.

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES.
 [I. L. R., 16 Mad., 94

See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT. . . I. L. R., 21 Calc., 869

1. ——— Doctrine of merger—*Applicability of, to mofussil of India.*—*Quare*—Whether the doctrine of merger applies to lands in the mofussil in this country. *WOOMESH CHUN, ER GOOPTO v. RAJNARAIN LOX* . . . 10 W. R., 15
 It does not. *SAYI v. PUNCHANUN ROY*
 [25 W. R., 503

MESNE PROFITS—continued.**1. RIGHT TO, AND LIABILITY FOR
—continued.**

they were entitled to maintain a suit for mesne profits against the defendants who trespassed on and occupied the lands whilst the estate was under the management of the bankers. **RAMCHITTON RAY v DWARKA DOSS** **2 N. W., 193**

11. —Decree-holder in possession—Rents due previous to his possession—When a decree-holder obtains possession of an estate in execution, he is not at liberty to sue the raiyats for rents falling due before the date of his taking possession. *His proper course is to sue the late wrongful possessor for mesne profits, including the rents.* **UMES CHANDRA v SHASTRIBHAI MOOKERJEE** **[3 B. L. R., Ap., 99]**

S C WOOMESH CHUNDER ROY v MARKUND MOOKERJEE **12 W. R., 34**

12. —Mortgagor after redemption—Period between date of suit and execution of decree—A suit for redemption is no bar to a mortgagor afterwards suing the mortgagee, who has been in possession for mesne profits due between the date of suit and the execution of the decree. **GOUR KISHEN SINGH v SAHAY FULKEER CHUND** **[7 W. R., 364]**

interest, the mortgagor being entitled to redeem at any time on payment of the principal. When the mortgagor deposited the principal, the mortgagee set up a false claim upon absolute sale, and forced the plaintiffs into a regular suit in which possession was decreed to them on payment of the principal. *Held* that they were entitled to mesne profits for such period as was not barred by the statute of limitation. *Held* also that plaintiffs were entitled to interest from the date of suit. **LUTER SINGH v. ALI REZA** **8 W. R., 323**

14. —Unlawful resump

MANTAN CHUND **1 Ind. Jur., O. S., 48**

15. —Upachowki of

lower Court, however, awarded to A mesne profits for six years. *Held* that B having proved his upachowki title, A could only be entitled to a share of the upachowki jumma, which was not of the nature of mesne profits, but of rent; and therefore a suit to recover that could not be brought in the Civil Court. **SHIB KUMAR JOTI v. KALI PRASAD SEN**

[1 B. L. R., A. C., 167]

MESNE PROFITS—continued.**1. RIGHT TO, AND LIABILITY FOR
—continued.**

16. —Liability for mesne profits—*Person declared to be in wrongful possession.*—A person declared by a decree to be in wrongful possession is liable for mesne profits, which may be recovered from any property in his possession. **PRABHU v. AHMED ALI KHAN** **4 W. R., 118, 7**

JAY NARAIN v. TORABCV **3 Agra, 216**

HERA LALL THAKOOR v. GRIDHAREE LALL **[8 W. R., 450]**

17. —Bond fides.—Parties in possession are liable for wastaf to the legal owners whom they keep out of possession, even though there was no *mala fides* on their part. **BEYNATH PERSHAD v. RADHOO SINGH** **[10 W. R., 488]**

18. —Holder of property for another—The mere possession by one person of another's land does not render the former liable to account for the profits. For these he is liable only where he has held tortiously, or under an agreement, express or implied, to make them good. **MAHAMMAD ALI BATA LABBI v. MOHIAIDIN NAINAR** **[1 Mad., 107]**

19. —Nature of possession—Trespasser—The plaintiffs, who were the junior members of a Malabar idom of which defendants Nos. 3 to 5 were the senior members, sued to recover with mesne profits possession of certain property, offering to pay the amount of a *kanam* advanced by defendant No. 1. It appeared that the land had been the subject of a *kanam* demise in 1805, that defendant No. 3, the then *karnavan*, had obtained in 1878 a decree for its redemption the right to execute which he assigned

of both the assignment and the *kanam* deed; but this decree was attached in execution proceedings in another suit and purchased by defendant No. 1, who executed it, purchased the property, deposited the *kanam* amount, and took possession on the 8th March 1884. The plaintiffs, who had meanwhile taken abortive proceedings to defeat the first defendant's title, instituted a suit in August 1884, praying for a decree that the sale to him be set aside without

the amount payable by them before they recovered the land. **SANKARAN v. PARVATHI**

[1 L. R., 19 Mad., 145]

20. —Person receiving raiyats from paying rent—A lessor who prevents raiyats from paying rent to the lessee when the latter comes to take possession is liable for mesne profits, even though he may not himself collect the rents. **BHERRUMBER SINGH v. KAL CHUNDER GUPTA**

[15 W. R., 100]

MESNE PROFITS—continued.**Suit for, and for possession.**

See RELINQUISHMENT OF, OR OMISSION TO
SUE FOR, PORTION OF CLAIM.

- [5 N. W., 173
4 B. L. R., F. B., 113
I. L. R., 9 Calc., 283
I. L. R., 3 All., 680
I. L. R., 19 Calc., 615
I. L. R., 11 Mad., 151, 210
I. L. R., 17 All., 533

See RES JUDICATA—RELIEF NOT GRANTED.

- [I. L. R., 17 Calc., 668
I. L. R., 14 Mad., 328
I. L. R., 21 Calc., 252
I. L. R., 21 All., 425

See VALUATION OF SUIT—SUITS—MESNE
PROFITS . . . Marsh., 105

- [W. R., 1834, 327
I. L. R., 17 Calc., 704
I. L. R., 15 Bom., 416
I. L. R., 21 Mad., 371

1. RIGHT TO, AND LIABILITY FOR.

1. **Suit for partition and account of right in joint estate.**—The sections of the Code of Civil Procedure relating to mesne profits are not applicable to a suit for partition or for account of the proceeds of family estate in which a plaintiff has no specific interest until decree. *PIETHI PAL v. JOWAHIR SINGH* . . . I. L. R., 14 Calc., 493
[I. R., 14 I. A., 37

2. **Right to mesne profits previous to partition—Joint family—Manager's liability to account—Mesne profits subsequent to partition, how recoverable—Civil Procedure Code (1882), s. 214—Right of suit.**—Although, as a general rule, no member of an undivided Hindu family can have any claim to mesne profits previous to partition, yet mesne profits may be allowed on partition where one member of the family has been entirely excluded from the enjoyment of the property, or where it has been held by a member who claimed to treat it as impartible, and therefore exclusively his own. Where a decree for partition is silent about mesne profits subsequent to the institution of the suit, a party is at liberty to assert his right to such profits by a separate suit. S. 214, para. 2, of the Code of Civil Procedure (Act XIV of 1882) expressly reserves such a right of suit. *BHIVRAV v. SITARAM*

[I. L. R., 19 Bom., 532

3. **Right to mesne profits—Damages for being kept out of possession.**—Regard being had to the constitution of the Courts of this country which are Courts of justice, equity, and good conscience, a decree-holder should be reimbursed damages for the time during which he is kept out of possession by the wrongful act of another party, whether his claim for subsequent damages be made in the execution of the first decree or in a regular suit. *KASHEE NATH KOOR v. DEB KRISTO RAMANOOJ DOSS* . . . 16 W. R., 240

MESNE PROFITS—continued.**1. RIGHT TO, AND LIABILITY FOR—continued.**

4. **Period for which suit is pending.**—There is no objection to the award of mesne profits or interest during the whole period for which a suit is pending, however long that period may be. *KAKAJI BIN RASOJI v. BAPUJI BIN MADHAVRAV* . . . 8 Bom., A. C., 205

5. **Legal owner—Right to sue for mesne profits.**—A party declared by a final judgment to have the legal title and the right to possession, is, so long as the judgment declaring him to be the legal owner remains in force, the only party who is legally competent to sue for mesne profits. *KHETTERMONEE DOSSEE v. GOPEEMOHUN ROY*

[1 Hay, 178

S. C. KHETTERMONEE DOSSEE v. GOPEEMOHUN ROY . . . 1 Ind. Jur., O. S., 83

6. **The right to sue for mesne profits is not transferable.** *DURGA CHUNDER ROY v. KOLLAS CHUNDER ROY*

[2 C. W. N., 43

7. **Co-sharer claiming re-partition of his share.**—A co-sharer claiming re-partition of his share is not entitled to mesne profits unless so provided by the *wajib-ul-arz*. *CHUNDER SINGH v. NIUTO* . . . 3 Agra, 11

8. **Co-sharers—Mortgage after foreclosure.**—A obtained a decree declaring him entitled to possession under a mortgage of one-third of the property in dispute, with mesne profits. B subsequently obtained a decree against A and the other co-sharers for possession of the whole estate, with mesne profits, under another mortgage; but instead of taking full advantage of his decree he received from all the co-sharers the amount due to him on the original transaction, and restored the property to them. Held that A was entitled to recover mesne profits due to him under the original decree. *BISNOO CHUNDER BISWAS v. TOYLUCK NATH BANERJEE* . . . 6 W. R., Mis., 28

9. **Co-sharers—Excess land.**—Plaintiff and defendant and certain others were co-sharers of an abad. Each agreed to cultivate certain portions, and afterwards to give up any excess land cultivated by him. Defendant cultivated 399 bighas in excess of his share. Plaintiff sued him and got possession of the excess land on payment to the defendant of a compensation for the expense of cultivation, and then brought his suit for mesne profits. Held that he was not, under the circumstances, entitled to mesne profits. *DEBNARAYAN DEB v. KALI DAS MITTER*

[6 B. L. R., Ap., 70: 14 W. R., 397

affirming on appeal *KALEE DOSS MITTER v. DEB NARAIN DEB* . . . 13 W. R., 412

10. **Persons not in actual possession—Right of suit.**—Held that, where the plaintiffs made over the management of their lands to their bankers, but did not part with the property in the lands, even for a temporary period,

MESNE PROFITS—continued.**1. RIGHT TO, AND LIABILITY FOR
—continued.**

committed a joint trespass, and to be jointly liable for the damages caused by such trespass. *Doe v Harlow*, 12 Ad and Ell, 40 followed. *Mohun Singh v. Ram Dass Chuckerbutty*

[8 C L R., 357]

32. — *Apportionment of liability*—Where intermediate holders combine wrongfully to keep an auction-purchaser out of possession, they must all be held liable for mesne profits. The Court need not apportion their liability in proportion to the extent of the property respectively held by them. *RAM CHUNDER SURVAN v. RAM CHUNDER PAL*. 23 W. R., 228

33. — *Apportionment of damages between joint tort-feasors*—In a suit for mesne profits against a number of defendants who have been in possession of distinct portions of a newly-formed chur, and are proved to have no title thereto it is competent to the Court, having regard to the provisions of the Civil Procedure Code, to apportion the damages payable by the defendants severally in respect of the portions held by them respectively. *Aliter*, where the defendants have jointly taken possession of a particular portion of such land. The reason for treating as joint tort-feasors all persons who have occupied portions of land ultimately found to belong to a neighbouring estate, and for applying the rule of contribution or apportionment between joint tort-feasors, is wanting in the case of a suit for mesne profits

mesne profits in respect of the parcels occupied by them respectively. *KRISHNA MOHUN BASAK v. KUNJO BEHARY BASAK*. 9 C. L. R., 1

34. — *Assessment of liability for—Suit for mesne profits with several defendants*—In a suit for mesne profits where there are several defendants the liability of the several defendants should be assessed in proportion to the amount of profits which each had derived from his wrongful possession. *NAWAB NAZIM OF BENGAL v. RAJ COOMAR DEBEE*. 6 W. R., 113

COLLECTOR OF BOGRAH v. SHAMA SUNKER MOJOMDAR. 6 W. R., 230

35. — *Representative of debt until sale of property taken in execution*—Where execution is ordered to be taken out against the estate of a deceased judgment-debtor, and the property is sold, the representative of the debtor cannot be called to account in execution for the mesne profits of the property while in his hands. *MUHAMMAD ALI ALI v. SAT COMBER MEHAR v. NAWAB NAZIM OF BENGAL*. 7 W. R., 308

36. — *Liability of jagirdar under an ijarah granted by party in wrongful possession*—A suit for mesne profits held to be

MESNE PROFITS—continued.**1. RIGHT TO, AND LIABILITY FOR
—continued**

against a party who took an ijarah pending litigation, though the decree for possession with profits was against the jagirdar's landlord. *BIDYAMAYA DEBEE CHOWDHURAI v. RAM LAL MISSEH*

[8 B. L. R., Ap. 80, 17 W. R., 148]

awarded. *KHERODHUR LALL v. DOOLEY CHAND*
[19 W. R., 424]

38. — *Decree-holder paying debt and taking possession from zur-i-peshgidar*—Where a decree-holder finding a zur-i-peshgidar in possession, paid the debt due by his judgment debtor to the zur-i-peshgidar, and entering into possession himself realized the rents, it was held that he could not demand wasilat from the judgment-debtor for the same period. *SHAM SOOYDER KHOSRA v. RAJENDER MISSEH*. 10 W. R., 330

39. — *Beng Regs XV*

Shortly afterwards it evicted the defendants and sold the land to C and D. The defendants sued A, C, and D, and obtained a decree for possession and mesne profits. They never got possession, but they recovered the mesne profits from A. On the expiry of the lease, C and D were held in a suit brought by them, entitled to redeem. *Held* the defendants were not liable, under Regulation XV of 1793 or I of 1798 to account for the mesne profits which they had recovered. *WIZERODH NISSA v. BAEERDUTY*

[B. L. R., Sup Vol., 613; 6 W. R., 240]

40. — *Mortgages in possession*—A mortgagee in possession occupies a fiduciary position towards all the persons interested as proprietors in the mortgaged estate and to all he is answerable for whatever mesne profits he may receive in excess of the amount which he is entitled to receive by law or agreement. And when some of the proprietors assert claims and assert such claims on behalf of themselves alone, he is entitled to require the claimants to establish the extent of their claims. *DEWABAI SINGH v. NAREE PRERNAD* 3 N W., 217

41. — *Liability of mortgagee after decree for foreclosure*—Where a mortgagee, after obtaining a decree for foreclosure,

MESNE PROFITS—continued.**1. RIGHT TO, AND LIABILITY FOR**
—continued.

21. ————— *Keeping owner out of possession.*—A party who has been active in wrongfully keeping another out of the possession and enjoyment of property is liable for consequential damages, whether he derived any profit himself from the possession of the land or not. **GHOGLY SAHOO v. CHUNDER PERSHAD MISSEI** . 21 W. R., 246

They should only be calculated for any period during which the defendant was active in keeping the plaintiff out of possession. **INDURJEET SINGH v. RADHEY SINGH** . 21 W. R., 269

22. ————— *Person in wrongful possession without knowledge of defect in his title.*—*Held*, dissenting from a ruling of the late Sudder Court, that mesne profits are always recoverable from a person who has enjoyed them, even though he has been in *bona fide* possession without knowledge of the defect in his title. He would, if he bought with sufficient inquiry, have a remedy against his vendor. **MUGUN CHUNDER CHITTORAJ v. SUBDESSUR CHUCKERBUTTY** . 8 W. R., 479

23. ————— *Person in possession apparently of right afterwards legally dispossessed.*—Where a defendant had, with apparent right, occupied newly-formed lands from which the plaintiff ejected him by establishing in a civil suit his superior title, the defendant was held liable to account to the plaintiff for those profits which the defendant had derived from the lands, and which the plaintiff, if he had been in possession, would himself have received. **ABDOOL KUREEM BISWAS v. CAMPBELL** . 8 W. R., 172

24. ————— *Suit by purchaser with notice of defect of title, for reversal of sale.*—Where a purchaser, by the institution of a suit for the reversal of the sale, had full notice of the defect of his title, he was, on the reversal of the sale in that suit, held liable for mesne profits. **UMAMOYI BURMONEA v. TARINI PRASAD GHOSE** [7 W. R., 225]

25. ————— *Vendor and purchaser.—Sale by elder brother during younger brother's minority.*—A sale by an elder brother during a younger brother's minority having been set aside and the vendee ejected, the vendee alone, and not the vendor, whose connection with the property ceased with the sale, was held to be liable for mesne profits received and expended by the vendee whilst in possession. **SHRUTCHUNDER DEY SIRCAR v. JADUNARAIN NUNDEE** . 1 W. R., 80

26. ————— *Possession taken by third party after suit.*—About the time that judgment was given in plaintiff's favour for possession with *wasilat*, a third party, in satisfaction of some other claim against the defendant, attached and got possession of the land in dispute. A question consequently arose in executing plaintiff's decree as to the liability for *wasilat* of the year in which the defendant was put out of possession by the third party. *Held* that, as under s. 223, Code of Civil Procedure,

MESNE PROFITS—continued.**1. RIGHT TO, AND LIABILITY FOR**
—continued.

plaintiff might have executed his decree by removal of the party who had got possession under a title created by defendant subsequent to the institution of the suit, he had the means of recovering possession while defendant had not. Under these circumstances, defendant could not be held liable for the profits. **HARADHUN DUTT v. JOYKISTO BANERJEE** [11 W. R., 444]

27. ————— *Obstruction to possession.—Dispossession.*—Obstruction to possession may be the ground of a claim for damages, but it cannot support a claim for *wasilat* unless there has been dispossession and the claimant has been prevented from enjoying rents and profits. **CHURN SINGH v. RUNGGOO SINGH** . 15 W. R., 221

28. ————— *Joint judgment-debtors.*—As a general rule, a suit for *wasilat* will lie against parties who have been found in a previous suit for recovery of the land to have been in wrongful possession, and against them only. If the plaintiff has recovered a decree against several persons as joint wrong-doers, he is not at liberty to single out one or more of them only as defendants in the suit for *wasilat*. **SUTRYA NUNDO GHOSAL v. SUROOP CHUNDER DOSS** . 14 W. R., 76

29. ————— *Joint liability.—Wrong-doers not in possession.*—The plaintiff purchased a house with land attached, and sub-let the property to his vendor, one of the defendants. The defendants having in collusion prevented his enjoying rent, he sued for rent, but on their intervention the suit was dismissed. He then brought a regular suit, and obtained a decree from the Civil Court for *khas* possession. In a suit to recover *wasilat*,—*Held* that, although the defendants were not all in possession, yet, as they all continued to oppose the plaintiff's possession, they were jointly liable for the *wasilat*. **SHAMASUNKER CHOWDHRY v. SREENATH BANERJEE** [12 W. R., 354]

30. ————— *Ijmali property where defendants have divided estate.*—In a suit to recover possession of land from the *ijmali* enjoyment of which the plaintiff had been excluded by the joint action of all the defendants who had divided the property between themselves,—*Held* that the defendants were all equally responsible for the damage sustained by the plaintiff, and that none of them could restrict their liability for mesne profits to that portion only of which they were in possession. *Held* also that the plaintiff was entitled to obtain mesne profits up to such time as he should get real and substantial, and not merely formal, possession of the property at the hands of the defendants in execution of his decree. **JHONKER PAUREY v. AJODHYA DOSS. AJODHYA DOSS v. LALLJEE PAUREY** . 19 W. R., 218

31. ————— *Actual occupier and lessor.*—Where lands are wrongfully withheld from the rightful owner, not only the actual occupiers, but also the person who has leased the land to the actual occupiers, may be held to have

MESNE PROFITS—continued**2 ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS—continued**

HUROVATH ROY v. INDRO BRODSUN DIB ROY
[8 W. R., 118, 33]

JANOKEE NATH MOOKERJEE v. RAJ KISTO SINGH
[15 W. R., 292]

51 ————— *Decree for possession—Civil Procedure Code, 1859, ss. 196, 197*—A decree for possession was construed to include mesne profits where the High Court was satisfied that such was the intention of the Court which passed the decree. A decree of a Court should under ss. 196 and 197 Act VIII of 1859, state whether mesne profits are awarded or not and it should distinctly state, when it reverses any points for subsequent inquiries in execution of the decree what those points are. **RAESONISSA REGUM v. SHARODA SOONDURER CHOWDHRAIN** 18 W. R., 25

52 ————— *Court with power to pass decree*—Although the assessment of mesne profits is reserved for the period of execution of decree, it is an essential part of the decree itself, and not a mere process in execution, and must therefore be made by a Court authorized to pass the decree. **MEHER JAN v. GERDA** 25 W. R., 270

LOCHAN v. MUNSOOR ALI CHOWDHRY
[11 W. R., 339]

54. ————— *Act XXIII of 1861, s. 11—Suit for mesne profits*—Where no liability to mesne profits is imposed by a decree, s. 11 of Act XXIII of 1861 does not give a power to extend the relief granted by the decree in respect of the right to mesne profits, but only to determine questions regarding the amount thereof when the right thereto has been ascertained by the decree. **SUBBA VETKATARA MAITAN v. SUBBAYA AYYAN**

[4 Mad., 257]

55 ————— *Decree silent as to mesne profits—Power of Court executing decree*—Plaintiff sued for possession of certain lands and for mesne profits. He obtained a decree for possession but the decree was silent as to mesne profits. Held that the Court executing the decree was not competent to entertain a claim for mesne profits made by the decree-holder. **CHUDDER COOMAR ROY v. GOVESH CHUDDER DASS** I. L. R., 13 Cal., 283

56 ————— *Suit for mesne profits—Act XXIII of 1861, s. 11—Civil Procedure Code, ss. 196 and 197*—Mesne profits are in themselves simply damages which do not exist as an obligation to be discharged until they have been awarded by a Court

MESNE PROFITS—continued**2 ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS—continued**

competent to do so. Therefore according to s. 11, Act XXIII of 1861, mesne profits payable at the time of execution must mean mesne profits which have been at that time directed to be paid by a decree of Court. A obtained a decree against B for recovery of possession of certain property and for mesne profits up to the date of the suit but the decree was silent as to mesne profits after that time. Held A was not barred by the provisions of s. 11 of Act XXIII of 1861 from bringing a suit against B for mesne profits after that time. **was kept**
JAMORINI

R., 62

HURCHURUN LAL v. TOORAB KHAN
[3 N. W., 179]

SHUM SHREE SINGH v. RAMJERAWAY RAM
[3 N. W., 416]

ISSUR DUTT SINGH v. ALLUCK MISSEY
[7 W. R., 429]

SHUMBHO MONCH ROY v. TIRPOODA SUNKUR ROY
[12 W. R., 126]

57 ————— *Act XXIII of 1861 s. 11—Execution of decree—Decree for possession*—Where in a suit for land the Court decreed to the plaintiff possession of the land, but made no decree in respect of mesne profits, Held the plaintiff could not, under s. 11 of Act XXIII of 1861, obtain an order from the Court executing his decree for mesne profits. **amount of**
must relate
known

[4 B. L. R., A. C., 111, 13 W. R., 11]

AMEER AHMED v. AMER AHMED
[18 W. R., 122]

RAM ROOP SINGH v. SHEO GOLAM SINGH
[23 W. R., 327]

property to B; but no mention of mesne profits was made in the decree. B then sued for recovery of mesne profits for the period during which A had been in possession. Held that such a suit would not lie. The question of mesne profits ought to have been decided in execution under s. 11 of Act XXIII of 1861. **SUBB NARAYAN POHRAJ v. KISHOR NARAYAN POHRAJ** 1 B. L. R., A. C., 149
[10 W. R., 131]

59 ————— *Suit for possession—Civil Procedure Code, ss. 2, 7 and 136—Act XXIII of 1861, s. 11*—The plaintiff brought a suit for possession of land with mesne profits. The suit was dismissed. He appealed on the question of possession only, and obtained a decree for possession

MESNE PROFITS—continued.**1. RIGHT TO, AND LIABILITY FOR
—continued.**

sued for possession and mesne profits, and the mortgagor did not prove that he had given the plaintiff possession or directed his lessee to pay rent to the plaintiff. *Held* that the mortgagor (defendant) was liable for wasilat from the date of foreclosure, so far as it was not barred by limitation. **SUROOR CHUNDER ROY v. MOHENDER CHUNDER ROY** 22 W. R., 539

42. — *Vendor and purchaser—Trustee for person out of possession.*—Where in a suit for partition it appeared that the vendor of the portion sued for had kept the vendee out of possession, the vendor, though liable for mesne profits, was not in the position of trustee of the rents for the party kept out of possession. **NIL KAMAL LAUCHI v. GUNOMANI DEBI**

[7 B. L. R., 113; 15 W. R., P. C., 38]

43. — *Ejectment of mortgagee's tenant of sir land by mortgagors.*—Where mortgagors had a right of occupancy in sir land, it was held that they could not be treated as trespassers for ejecting the mortgagees' tenant and taking possession; but inasmuch as, instead of giving notice to the mortgagees of their intention to avail themselves of such rights and to enter on the sir land as tenants, at the same time offering to pay such rent as might, having regard to the provisions of s. 7, Act XVIII of 1873, be properly payable by them, they entered on the sir land and ousted mortgagees' tenant, they rendered themselves liable for mesne profits. **BAKHAT RAM v. WAZIR ALI**

[I. L. R., 1 All., 448]

44. — *Ejectment and taking possession on expiry of lease without notice of ejectment—N. W. P. Rent Act (XII of 1891), s. 36.*—Where upon the expiry of the term of a lease, but without the written notice of ejectment required by s. 36 of the N. W. P. Rent Act having been given by the lessor, possession was taken and rents collected by persons claiming under a subsequent lease, *Held* that the tenancy of the first lessees did not cease upon the determination of the term of their lease, and that the second lessees were wrong-doers in usurping possession and collecting rents and profits, and were liable in a suit for damages by way of mesne profits after deduction of a sum paid by them for Government revenue, but without deduction of what they had paid the lessor or of the expenses they had incurred in collecting the rents. **SHITAB DEVI v. AUDHIA PRASAD**

[I. L. R., 10 All., 13]

45. — *Resumption by Government—Lakhirajdar—Fraud.*—In a suit for wasilat in respect of mal lands fraudulently included by the lakhirajdar with lakhiraj lands resumed by Government and afterwards settled with him, *Held* that the lakhirajdar, and not the Government, was liable; and that, as the sum claimed was definite and required no further inquiry to ascertain the amount due, interest had been properly awarded from date of suit. **COOMAREE DABEE v. MAHTAB CHUND**

[W. R., 1864, 380]

MESNE PROFITS—continued.**1. RIGHT TO, AND LIABILITY FOR
—concluded.**

46. — *Assessment of mesne profits—Land out of jurisdiction.*—Where application was made for execution of a decree for possession with mesne profits of five mouzals situated within the Court's jurisdiction, and Government revenue was so assessed upon these five mouzals, and two other mouzals situated in another district, that the amount paid on account of the five mouzals and the two mouzals respectively could not be apportioned, the Court had no jurisdiction to determine and award mesne profits for the two mouzals not within its jurisdiction, but should have made an apportionment to the best of its ability. Nor ought the Court to have assessed the mesne profits by relying upon certain jamabandi papers made by the Government revenue officers some thirty years ago, without inquiring into the actual rents or proceeds of the estate during the period of dispossession. **PURAN CHUNDER ROY v. JUGGESHUR MOOKERJEE** 17 W. R., 298

47. — *Forfeiture of property—Liability of Government.*—Where property is confiscated by Government, it is only responsible for the profits during the time it is in possession, and to such amount as was actually realized, or such as might and would have been realized but for negligence or fraud on the part of its servants. **MOHUN LALL v. GOVERNMENT** 2 Agra, Mis., 6

**2. ASSESSMENT IN EXECUTION AND SUITS
FOR MESNE PROFITS.**

48. — *Assessment of mesne profits—Power of Court executing decree to assess mesne profits.*—A Court executing a decree has no power to assess mesne profits, unless it is ordered by the decree that the mesne profits are to be assessed in execution; and it is an essential part of a decree which orders mesne profits to be assessed in execution, to fix the period in respect of which such mesne profits are to be assessed. **WISE v. RAJENDUR COOMAR ROY** 11 W. R., 200

49. — *Order in execution of decree giving mesne profits not awarded by decree.*—An order, assumed to be made by a Court in execution, that the decree-holders should have mesne profits which had not been awarded in their decree, was held to be made without jurisdiction, and could not be regarded as taking effect. **KALKA SINGH v. PARAS RAM** I. L. R., 22 Cal., 434 [L. R., 22 I. A., 68]

50. — *Execution of decree—Decree silent as to date to which mesne profits are to run—Subsequent mesne profits.*—Where a decree is silent as to the date up to which mesne profits are to run, and merely gives a decree for possession with mesne profits, those mesne profits can only be reckoned, for the purposes of assessment in execution, up to the date of the institution of the suit. **RAM MANICKYA DEY v. JUGGUNNATH GORE** I. L. R., 5 Cal., 563

MESNE PROFITS—continued.**2. ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS—continued**

Singh, 14 W. R., P. C., 23 & B. L. R., 605, in no way militates against the Full Bench ruling in Moosodun Lall v. Bekaree Singh, B. L. R., Sup. 1 of 602 & W. R., Mts., 109, which laid it down that under s. 11, Act XXIII of 1861, the Court executing a decree is not to determine whether mesne profits are to be awarded or not, but only the amount of such profits. RAMKANYE GHOSE v. GOORCO PRASUNO ROY. 18 W. R., 30

68. — *Power of Court as to mesne profits in execution of decree—Decree of Privy Council executed by Courts in India.*—Where the Privy Council made an order in favour of a plaintiff, decreeing possession of certain property with mesne profits.—*Held* that the intention was to award such a sum as would compensate the plaintiff for his actual loss and the decree therefore authorized the Courts of this country to consider and deal with the question of mesne profits as fully as a Court could which was charged with the duty of originally determining the merits of such a question between the parties to the suit. The High Court accordingly awarded the amount of actual loss found to have been incurred in respect of each year, with interest thereon from each year to the date of the High Court's order. BUDLUX v. FUZLOON RUMMAN. [23 W. R., 449]

is really a mere matter of procedure, accepted this construction of the law as binding. The plaintiff obtained a decree for the possession of certain lands with mesne profits up to the date of suit. No claim was made in the plaint for mesne profits accruing due after the date of suit, and the decree was silent in respect thereof. In appeal against the decree having been brought by the defendant, execution was from time to time, stayed by the Court on the defendant giving security for the execution of mesne profits out of possession on appeal. The effect of the interim mesne profits. *Held*, in the Court below, that, as there was no provision for by the decree they could not, under s. 11, Act XXIII of 1861, be awarded in execution, but must be made the

MESNE PROFITS—continued.**2. ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS—continued.**

subject of a separate suit. *Held* by the Judicial Committee that the proceedings whereby the defendant led the Court to stay execution and continue him in possession, laid him under an obligation to account in the

considered "a question relating to the execution of the decree" within the meaning of the section, he was, in any case, precluded by the ordinary principles of estoppel from contending that the mesne profits in question were not payable under the decree. SADASIVA PILLAI v. RAMALINGA PILLAI. [15 B. L. R., 383; 24 W. R., 193]

L. R., 21 A, 219
S. C. in High Court, RAMALINGA PILLAI v. SATHASIVA PILLAI. 7 Mad., 97

CHOWDHREE NAIN SINGH v. JAWAHAR SINGH. [1 N. W., 167; Ed. 1873, 248]

BHOONESSUREE CHOWDHRAIN v. MANOY. [22 W. R., 160]

ABDOOL ALI v. ASHRUFFUN. 25 W. R., 215
70. — *Act XXIII of 1861, s. 11*—A decree of 1854 for possession and

profits. This application was disallowed on the ground that there was no provision in the original decree awarding mesne profits and that an amendment to which the decree-holder had referred was

was seeking to maintain the order in the Civil Courts in 1854 and 1865 his application of July 1865 was in time, and he was entitled under an order of a competent Court to receive the mesne profits claim. HIRMO DOONDERY DOSSER v. NORODDER. [11 W. R., 325]

71. — *Decree for possession without mesne profits—Mesne profits afterwards allowed.*—Where an auction purchaser, who prayed for possession as well as mesne profits, obtained a decree for possession which said nothing about mesne profits and no reason appeared why mesne profits should be refused the High Court allowed mesne profits in execution. KALPESWAR DOSS v. RAJAN MEAN. 22 W. R., 406

MESNE PROFITS—continued.**2. ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS—continued.**

without any mention of mesne profits; and afterwards, in execution of the decree, he obtained possession of the land. *Held* the plaintiff could afterwards bring his suit to recover mesne profits from the date of decree for the period of six years next before the commencement of the suit, exclusive of the period during which the plaintiff was in possession. Ss. 2, 7, and 196 of Act VIII of 1859, and s. 11 of Act XXIII of 1861, were no bar to such suit. **PRATAP CHANDRA BURUA v. SWARNAMAYI. SWARNAMAYI v. PRATAP CHANDRA BURUA**

[4 B. L. R., F. B., 113; 13 W. R., F. B., 15]

60. ————— *After suit for immoveable property where mesne profits are not mentioned in decree.*—When a suit is brought to recover possession of immoveable property, and the decree does not provide for the mesne profits that accrued during the suit, a separate suit may be maintained for them. Where, however, it can be shown that the omission in the decree to provide for mesne profits was the deliberate act of the Court, the defendant may set that up as a defence in the separate suit. **SITARAM AMBUT v. BHAGVANT JAGANATH**

[6 Bom., A. C., 109]

61. ————— *Profits between filing of plaint and execution of decree—Act XXIII of 1861, s. 11.*—Where a decree awarding possession of immoveable property is silent as to mesne profits accruing between the filing of the plaint and the execution of the decree, the Court executing the decree has no power to award such profits. The proper course for the plaintiff to adopt, under such circumstances is to apply to the Court which passed the decree for a review, or else to file a separate suit. **Jiva Patil Rahimna v. Malukji Mani Nathuna**, 3 Bom., A. C., 31, overruled. **RADHABAI v. RADHABAI**

4 Bom., A. C., 181

CHOWDHRY IMDAT ALI v. BOONYAD ALI

[14 W. R., 92]

62. ————— *Act XXIII of 1861, s. 11.*—A plaintiff in possession under a decree for land and mesne profits, applied for further execution as to mesne profits and obtained an order from the Court of first instance (the District Munsif's Court). This order was reversed by the Appellate Court (the Civil Court), leaving still open to the Court of first instance to make a further order. Plaintiff, however, instead of applying again for execution, instituted a fresh suit for mesne profits in the Civil Court. The Civil Judge rejected the plaint. *Held* that s. 11, Act XXIII of 1861, warranted the rejection of the plaint, on the ground that the mesne profits to which plaintiff laid claim in the suit were payable in respect of the subject-matter of the former suit. **LAKSHMI NARASIMHALU v. CHATRAZU JAGANNADHAM PANTALU alias SRINIVASA RAU. EX-PARTE RUDDRAVARPU VISSAM RAZ alias KONAMARAZE**

3 Mad., 287

63. ————— *Power of Court executing decree to assess mesne profits not decreed.*—Where a decree was silent as to the plaintiff's

MESNE PROFITS—continued.**2. ASSESSMENT IN EXECUTION AND SUIT FOR MESNE PROFITS—continued.**

right to mesne profits after the date of filing the suit and did not reserve any question of mesne profits for further investigation, the Court which executed the decree was held to have acted *ultra vires* in ordering an investigation into mesne profits which may have accrued due pending the suit and up to the time of execution. **BROUGHTON v. PERHLAD SEN**

[19 W. R., 154]

64. ————— *Act XXIII of 1861, s. 11—Separate suit—Question in execution of decree.*—D obtained a decree for an undivided share of certain property, but the defendants having apportioned the entire property amongst themselves and held each his own portion exclusively, D seized in execution a part of the share of one of them, P. On appeal the possession was ordered to be given up. P then sued to recover mesne profits for the period of D's possession. *Held* that the damages in question ought to have been sought in the execution proceedings when the possession itself was recovered, and not by the institution of a new suit; a Court being bound not only to place an aggrieved party back in the original position from which its erroneous action had displaced him, but also to give him compensation for such loss as he had thereby sustained. **DULJEET GORAIN v. REWUL GORAIN**

[22 W. R., 435]

65. ————— *Act XXIII of 1861, s. 11—Question to be decided in execution of decree.*—Certain decree-holders, having been sued successfully for possession by the judgment-debtors in the first Court, appealed to the High Court, who reversed the decision, and whose order was confirmed by the Privy Council. The decree-holders on this applied for execution and for mesne profits for the interval during which they had been kept out of possession. *Held* that they were entitled to what they claimed in execution without bringing a regular suit, as the effect of the High Court's decree was to replace the parties *in statu quo*. **UNUNT RAM HAZRAH v. KURALEE PERSHAD MISTREE**

[23 W. R., 441]

66. ————— *Assessment under Privy Council decree—Execution of decree of Privy Council—Decree for possession.*—When the Privy Council declares an appellant entitled to real property, of which he was out of possession, and directs the High Court to make the inquiry necessary to ascertain what is comprised therein, and to proceed in the suit as upon the result of such inquiry may appear to be just, the High Court, on being applied to for execution, ought, besides giving possession, to ascertain and award mesne profits up to the date of giving possession. **LILANUND SINGH v. LUCKMIPUR SINGH**

5 B. L. R., 605

S. C. LEEANUND SINGH v. LUOHMPSUR SINGH

[14 W. R., P. C., 23; 13 Moore's I. A., 490]

67. ————— *Assessment of mesne profits under Privy Council decree—Power of Court executing decree.*—The judgment of the Privy Council reported in *Leelanund Singh v. Luchmessur*

MESNE PROFITS—continued**2 ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS—continued.**

time the land was in possession of A. B thereupon, seeking execution of the Appellate Court's decree, applied to be reinstated in possession, and also for an

that the party against whom the erroneous decree had been enforced had been deprived of by such enforcement. *LALI KOOR & SOHADRA KOOR*

[I L R., 3 Calc., 720; 2 C L R., 75

81. ————— Decree for pos-

possession of immovable property obtained a decree for possession thereof and in execution of the decree obtained possession of the property. This decree was subsequently reversed on appeal by the defendant. The decree of the Appellate Court was silent in respect of the mesne profits which the plaintiff had received while in possession. The defendant instituted a suit to recover those profits. *Held per PETHERAM C J, OLDFIELD, BRODIE, and DUTHOIT, JJ.* that the suit was not barred by s. 244 of the Civil Procedure Code, the question raised by such

by that section. *Pertab Singh v. Beni Ram, I L R., 2 All., 61*, distinguished by *OLDFIELD J Per MAHMOOD, J.*—That the suit was not barred by

should be read as any other questions "directly arising", otherwise the most remote inquiries would be possible in the execution department. *RAM GHULAM & DWARKA RAI I L R., 7 All., 170*

82. ————— Decree for possession of immovable property—Execution of decree—Reversal of decree on appeal—Mesne profits—Civil Procedure Code, s. 553—G obtained a decree against R for possession of a house, and in execution thereof obtained possession. On appeal the decree was set aside by the High Court, whose decree did not direct that the appellant should be restored to possession and was silent as to mesne profits. *Held* that with reference to s. 553 of the Civil Procedure Code, R was entitled to recover possession of the property in execution of the High Court's decree; but that, with reference to the decision of the Full Bench of the Court in *Ram Ghulam v. Dwarka Rai, I L R., 7 All., 170*, he could not, in execution of that decree, recover mesne profits. *GHANU LAL & RAM AHAI*

[I L R., 7 All., 197

MESNE PROFITS—continued**2 ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS—continued**

83. ————— Execution of decree—Possession under decree—Restitution of property after reversal of decree—Civil Procedure Code, 1852 s. 244—A Court reversing a decree under which possession of property has been taken, has power to order restitution of the property taken possession of and with it any mesne profits which may have accrued during such possession. *NOOKGOOND LAL PAL CHOWDHRY & MAHOMED SAMI MEAH*

[I L R., 14 Calc., 484

84. ————— Decree for possession of immovable property—Reversal of decree on appeal—Suit for recovery of mesne profits from person who has taken possession under a decree which is subsequently reversed on appeal—Civil Procedure Code (Act XIV of 1852) s. 244—A landlord sued his tenant for arrears of rent and obtained

executed the decree and obtained possession. The tenant appealed and succeeded in getting the decree set aside and the amount found due from him for arrears by the first Court was reduced, and a decree made directing that, if the reduced amount were not paid within fifteen days, he should be ejected. He paid the amount found due by the Appellate Court within the fifteen days and recovered possession of his holding. He then brought a suit in the Munsif's Court to recover mesne profits from his landlord for the time he was in possession after the execution of the first Court's decree. It was contended on second appeal that the suit would not lie as the matter might and should have been determined in the execution department under s. 244 of the Civil Procedure Code. *Quare*—Whether such a suit does not lie, and whether the decisions in *Lali Koor v. Sohadra Koor, 2 C L R., 75* and analogous cases to the effect that such a suit does not lie, are correct. *Ram Ghulam v. Dwarka Rai I L R., 7 All. 170*, cited and approved. *AZIZUDDIN HOSSAIN & RAMANUGRA ROY I L R., 14 Calc., 605*

85. ————— Civil Procedure Code, s. 553—Claim for mesne profits on reversal of decree for possession of land executed—A decree for possession of immovable property, having been executed, was reversed on appeal. The defendant applied under s. 553 of the Code of Civil Procedure for restitution of the mesne profits taken by the plaintiff. The lower Courts dismissed the application on the ground that the proper remedy was by suit. *Held* that the defendant was entitled to the relief claimed. *KALIANANDRAM & ESHWARYWARA*

[I L R., 11 Mad., 261

86. ————— Execution of decree on suit for possession—Execution pending appeal—Reversal of decree on appeal and restoration of possession—Right to restitution of mesne profits—Civil Procedure Code (1852), ss. 244 and 553—Separate suit—R brought a suit against K for

MESNE PROFITS—continued.**2. ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS—continued.**

72. ———— *Question of amount of mesne profits—Decree for possession with mesne profits from date of suit.*—A decree awarding possession with wasilat from the date of suit was held to be rightly construed as awarding mesne profits until the date when delivery of possession should be effected, and reserving the question of the amount for adjustment in execution. *BUNSEE SINGH v. NAZUF ALI* [22 W. R., 323]

73. ———— *Suit for possession and mesne profits—Inquiry as to the latter deferred by the judgment—Decree silent as to mesne profits—Decree, Form of—Civil Procedure Code, ss. 45, 212, and 244.*—A Court, which had virtually adjudged mesne profits to the claimant in the same judgment in which it decided that she was entitled to the immoveable property claimed, left open the question of the amount of those profits to be decided in subsequent proceedings. In the decree which followed no mention was made of the profits. *Held* that it was competent to the Court to defer the inquiry in that manner, nothing in the Code of Civil Procedure preventing such a disposal of the suit. If there had been a technical omission in the decree, it had not affected the right of the plaintiff. *MUHAMMAD ABDUL MAJID v. MUHAMMAD ABDUL AZIZ* [I. L. R., 19 All., 155 L. R., 24 I. A., 22]

74. ———— *Mesne profits between decree and possession—Power of Court executing decree.*—In a suit for possession and wasilat, the first Court awarded wasilat, but the lower Appellate Court, considering that no evidence had been given by the plaintiff of the wasilat which he was entitled to recover, allowed him up to date of suit only the amount which he had paid as Government revenue upon his mehal. *Held* that the Court executing the decree was not prevented from ascertaining the amount of wasilat which had accrued between the date of decree and the date of possession. *MAHOMED BUSHEEROOLLAH CHOWDHRY v. HEDAET ALI CHOWDHRY* 8 W. R., 42

75. ———— *Act XXIII of 1861, s. 11—Suit for damages for illegal appropriation of produce—Suit for mesne profits.*—A suit by a raiyat against another for damages on account of illegal appropriation of the produce of the land, including the raiyat's profits, by the defendant during certain years is not a suit for mesne profits, and is therefore unaffected by s. 11, Act XXIII of 1861. The question regarding amount cannot be settled in execution, but by separate suit. *JOY KISHEN MOOKERJEE v. JODOONATH GHOSE* 3 W. R., 1

76. ———— *Suit for mesne profits of land taken in excess under decree and restored.*—Where a decree-holder in execution takes possession of more land than is covered by the decree, and on an objection raised, and after inquiry made, the excess land is subsequently relinquished, the question of wasilat, being one which arises between the parties to the suit with reference to the execution

MESNE PROFITS—continued.**2. ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS—continued.**

of the decree, must, under Act XXIII of 1861, s. 11, be determined by the Court executing the decree, and not by a separate suit. *BAMA SOONDURIE DABEK v. TARINTEE KANT LAHOOREE* 20 W. R., 415

See RADHA GOBIND SAHA v. BROJENDER COOMAR ROY CHOWDHRY 7 W. R., 372

77. ———— *Execution of decree for possession, Stay of—Right to mesne profits.*—Execution of a decree for possession merely of certain land having been stayed, and the defendant, pending an appeal to the Privy Council, continued in possession by the High Court upon his giving security for the "due performance of such order as might be made by the Privy Council," the appeal was subsequently dismissed, no order being made as to mesne profits. *Held*, on the authority of the case of *Sadasiva Pillai v. Ramalinga Pillai*, 15 B. L. R., 333 : L. R., 2 I. A., 219 : 24 W. R., 193, that, under the circumstances, the decree-holder was entitled to mesne profits from the date of the decree until he was put in possession, and that the amount of such profits should be determined by the execution department. *See, however, the case of Forester v. Secretary of State*, L. R., 4 I. A., 137. *GOGUN CHUNDER SINKAR v. LAIDLAY* 5 C. L. R., 189

78. ———— *Decree for mesne profits—Execution of decree made on compromise—Procedure—Possession.*—B sued his brother C for possession of certain lands. B and C came to an amicable settlement, one of the terms of which was that C during his life should retain possession of certain of the lands, and that after his death they should pass to B. A decree was given in accordance with the terms of the compromise. On C's death, his widow refused to put B in possession of the lands. B sought to obtain possession of the lands, with mesne profits, by executing the decree under the compromise against C's widow. *Held* that he ought to proceed by regular suit. *TABA MANI DASI v. RADHA JIBAN MUSTAFI*

[6 B. L. R., Ap., 142 : 14 W. R., 485]

79. ———— *Reversal of decree—Decree for possession—Mesne profits in execution of decree.*—N obtained a decree against A for certain lands, and was put in possession of them in execution of the decree. On appeal the decree against A was reversed, and the lands were accordingly restored to him, but no provision was made as to the mesne profits received by N when he was in possession of the lands under the decree of the lower Court. In a suit brought by A against N to recover such mesne profits, it was held that the suit would lie, and was not prohibited by s. 11 of Act XXIII of 1861. *ABHRAH ALLI v. NATHA JALLAM* 5 Bom., A. C., 74

80. ———— *Decree for possession—Execution of decree.*—A sued B and obtained possession of certain property under a decree. On appeal this decree was reversed. The judgment and decree of the Appellate Court made no order about mesne profits which had accrued during the

MESNE PROFITS—continued.**3 MODE OF ASSESSMENT AND CALCULATION—continued.**

from which the defendants had wrongfully kept the plaintiff out of possession *DWARAKA LALL MUNDUR v NIBUNDRO NARAIN SINGH* . 22 W. R., 461

97. ———— *Mode of calculation of mesne profits—Decision of Court*—The sum to be recovered in the case of a suit for mesne profits is of the nature of damages to be assessed by a proper exercise of the judicial discretion of the Court which

98. ———— *Interest—Damages—Wafat*—Interest calculated upon yearly rests of rent may, when claimed by the plaintiff in his plaint, be given as an essential portion of the damages which are recoverable by a person wrongfully kept out of possession of immovable property *Protap Chunder Borooah v Surnomeye* 14 W. R. 151, followed. The term 'mesne profits' does not include interest year by year on those profits *Hurro Durga Choudhary v Surut Sundari Dabi, I L R, 8 Calc. 332*, followed. Principles stated on which the calculation of mesne profits should be based. *Brojendro Coomar Roy v Madhub Chunder Ghose* I L. R. 8 Calc., 343

See *RAMDHUL SINGH v PURNESHORE PERSHAD NARAIN SINGH* . . . 7 W. R., 78

99. ———— *Interest, Loss of*—*Interest on mesne profits year by year*—The term "mesne profits" means the amount which might

L. R., 9 I. A., 1

reversing on appeal, the decision of the High Court in *HURRO DURG CHOWDHURY v SHABRAT SOONDERY DABEA* .
[I. L. R., 4 Calc., 674; 3 C. L. R., 417]

100. ———— *Profits obtained from land by ordinary diligence*—Mesne profits means those profits which the person in actual wrong-

DHON BISWAS . . . 8 W. R., 103

DEVILYA v TEHERANER . . . 9 W. R., 374

101. ———— *Collections by*

ROY v KASHEENATH LAL CHOWDHRY
[5 W. R., 37

MESNE PROFITS—continued.**3 MODE OF ASSESSMENT AND CALCULATION—continued**

102. ———— *Cultivation of lands by person in wrongful possession*—When a person in wrongful possession of land has himself occupied and cultivated it, the proper principle on which the amount of mesne profits is to be calculated is to ascertain what would have been a fair and reasonable rent for the land if the same had been let to a tenant during the period of the unlawful occupation by the wrong doer *ASMUT KOOR v INDURJEET KOOR* B. L. R., Sup. Vol., 1003

S C ASMED KOOR v INDURJEET KOOR
[9 W. R., 445]

BINDABUN CHUNDER SINGAR v ROBERTS
[B. L. R., Sup. Vol., 1004 note]

CHARDOY v AJEET SINGH 12 W. R., 52

TRIPPOORA SOONDHER DEBIA v COOMAR PRO MOTHONATH ROY 11 W. R., 533

BISHNESSURE DEBIA v MOHUN CHUNDER BOSE
[5 W. R., 35]

103. ———— *Proper principle of determining amount of damages*—The plaintiffs obtained a decree for ejectment against the defendants on the 4th Bhadra 1293 F., but they did not obtain possession till Assar 1301 F., they brought the present suit to recover damages, claiming Rs 53 old as the profits realized from the crops during 1299, 1300, and 1301. Held that the proper principle upon which mesne profits should be assessed in cases like these is to ascertain what would have been a fair and reasonable rent for the land if the same had been let to a tenant during the period of the unlawful occupation. *unlawful occupation v Interest on profits of the land at 5%.*

followed *RAGHU NARAYAN JHA v JALPA PATTAI*
[3 C. W. N., 748]

104. ———— *Principle on which they should be assessed—Interest*—In determining the amount payable to the holder of a decree for mesne profits, a Court is bound to consider, not what has been or what with good management might have been, realized by the party in wrongful possession, but what the decree-holder would have realized if he had not been wrongfully dispossessed. Under a decree for mesne profits the decree-holder is entitled to interest on such profits from the time at which they would have come to him if he had not been dispossessed. *LUCKHY NARAIN v KALLY PUDDO BAKSHER*

[I. L. R., 4 Calc., 593; 4 C. L. R., 90]

105. ———— *Principle on which they should be assessed*—In a case of wrongful dispossession, the principle upon which was laid should be assessed is to ascertain what the actual rents or proceeds of the estate were, and to make the wrong doer account for them to the party dispossessed, everything being assumed against the

MESNE PROFITS—continued.**2. ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS—continued.**

possession of certain land, and obtained a decree. *K* appealed, but pending the appeal *R* took possession of the land in execution of his decree. *K* was successful in the appeal, and was restored to possession in execution of the decree of the Appellate Court, which, however, was silent as to mesne profits. In an application by *K* for mesne profits for the period during which *R* was unlawfully in possession,—*Held* that *K* was entitled to restitution of such mesne profits in the execution proceedings, and it was not necessary for him to bring a separate suit to recover them. He was entitled to such restitution either by reason of the power conferred by s. 583 of the Civil Procedure Code upon the Court which passed the decree (*Kalianasundram v. Egnavedeswara*, I. L. R., 11 Mad, 261) or by reason of the inherent right that the Court has to order the restitution of the thing which had been improperly taken under the erroneous decree set aside in appeal. *Mookoond Lal Pal Chowdhry v. Mahomed Sami Meeah*, I. L. R., 14 Cal., 484, referred to. *RAJA SINGH v. KOOLDIP SINGH* I. L. R., 21 Cal., 989

87. ————— *Decree for possession and mesne profits for certain date to be fixed in execution—Civil Procedure Code, 1882, s. 211.*—Where a decree directed that plaintiffs should get mesne profits from a certain date till delivery of possession, the amount to be fixed in execution,—*Held* that the decree was necessarily subject to the limitation laid down in s. 211 of the Civil Procedure Code (Act XIV of 1882), and that mesne profits for more than three years from the date of the decree should not be awarded, even though possession was not delivered during that period. *NARAYAN GOVIND MANIK v. SONO SADASHIV* . . . I. L. R., 24 Bom., 345

UTTANORAM v. KISHORIDAS

[I. L. R., 24 Bom., 149

88. ————— *Separate suit for mesne profits—Decree-holder kept out of possession—Act XXIII of 1861, s. 11.*—Mesne profits for the period during which the decree-holder was executing the decree and was kept out of possession by the opposite party may be awarded by the Court under s. 11, Act XXIII of 1861. It is not necessary to bring a separate suit. *HOOKUM PEBEE v. MAHOMED MOOSA KHAN* . . . 6 W. R., Mis., 13

89. ————— *Mesne profits accruing after decree.*—*Held* that no separate suit would lie for mesne profits accruing during the pendency of the suit and delivery of possession. S. 10, Act VIII of 1859, provides for mesne profits accruing before the suit. *OONKUR DASS v. HEEBA SINGH* [I Agra, 141

RAM SHUNKER v. LALEE BAE . . . 2 Agra, 268

SHUNKER LALL v. RAM LALL

[I N. W., 177: Ed. 1873, 256

90. ————— *Act XXIII of 1861, s. 11—Mesne profits accruing after decree.*—Even with the permission of the Civil Court, a separate suit cannot be brought for mesne profits

MESNE PROFITS—continued.**. ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS—concluded.**

between the institution of the original suit and the execution of the decree thereon. Act XXIII of 1861, s. 11, commented on. *CHENNAPPA NAYUDU v. PITCHI REDDI*, . . . 1 Mad., 453

NARAYANA AIYAN v. SRINIVASA AIYAN

[2 Mad., 435

91. ————— *Prior suit for possession without mesne profits.*—A party can bring a suit for mesne profits after he has obtained a decree for possession in a prior suit, in which no provision had been made in the valuation of the suit for mesne profits. *SHIVASUNDARI DEVI v. RAMSHAMAYAT KURMI* . . . 1 B. L. R., S. N., 3

3. MODE OF ASSESSMENT AND CALCULATION.

92. ————— *Time for ascertaining mesne profits—Execution of decree.*—Where wasilat is decreed, the mode of ascertaining it is rightly reserved for the proceedings in execution. *GULE v. MAHARANEE SREEMUTTY* . . . 15 W. R., 133

93. ————— *Ascertainment of mesne profits—Execution before all the mesne profits are ascertained—Power of Court executing decree.*—Execution may issue with respect to ascertained wasilat, pending inquiry as to unascertained wasilat. In ascertaining and declaring the amount of wasilat due under a decree, the Court executing it has no power to alter the decree in respect to interest awarded. *ARFUNNISSA CHOWDHRAIN v. KOKIBUNNISSA CHOWDHRAIN* . . . 24 W. R., 444

94. ————— *Act XXIII of 1861, s. 11—Criminal Procedure Code, 1859, s. 196.*—A decree for possession and mesne profits must, with reference to s. 196, Civil Procedure Code, 1859, be held to mean mesne profits down to the date of delivery of possession. Where the amount of mesne profits is not expressly admitted, the Court is bound to deal with it as if disputed, and either to determine the amount at the trial or to reserve it for assessment in execution. *DHURAM NARAIN SINGH v. BUNDHOO RAM*

[12 W. R., 75

But where everything is ordered to be ascertained in the execution stage, both the period and amount can be assessed. *HURREHUR MOOKERJEE v. MOLLAH ABDOLBUR* . . . 17 W. R., 209

95. ————— *Power of Court executing decree.*—Where the suit is for mesne profits alone, the Court executing the decree is not competent to fix the amount in the course of execution. *BHOOBUNNESSUREE CHOWDHRAIN v. MANSON* [22 W. R., 160

96. ————— *Construction of decree.*—Where a decree of the High Court simply directed payment by way of damages of the proceeds of a specified share of certain property,—*Held* that it left nothing to be determined in execution, except the assessment of the rents and profits of the share

MESNE PROFITS—continued.**3 MODE OF ASSESSMENT AND CALCULATION—continued**

TELUCK CHAND BABOO v SOUDAMINEE DOSSEE
[23 W. R. 108]

[1 N W, 189: Ed. 1873, 273]

might have received, and which can no longer be

payments But he cannot be charged with payments of rent made by the plaintiff to the zamindar Bessessoree Dabee v Tarasoodere Brahmin Mahomed Hajra v Tarasoodere Brahmin Marsh, 201: 1 Hay, 577

118. *Failure of decree holder to prove rate of rent*—In estimating the amount of mesne profits where a decree holder could not give satisfactory evidence as to the rates at which he received rents and the collections he made, the judgment-debtor was held liable for the amount stated in the Collector's jammabandi, minus the cost of collection, leaving him to recover from Government what he has paid on account of revenue, unless the sums so paid had already been refunded by Government to the decree holder PALMER v BAL GOBIND DOSS 7 W. R. 230

119. *Landlord and tenant*—Held that the mode of estimating the amount of mesne profits in respect of a taluk held by plaintiff under defendant was to ascertain the amount of profits which plaintiff could have realized from the taluk if he had not been dispossessed therefrom by the wrongful act of defendant, and that, as there

ought to be deducted from the gross calculation of the taluk Held also that there seemed no reason why the same rule should not be adopted in this case merely because the wrong-doer was the landlord. BUTTA CHUNDER MOJCOMPAR v. HERO PROSUNO BUTTACHARJEE. HERO PROSUNO BUTTACHARJEE v BUTTA CHUNDER MOJCOMPAR

[17 W. R., 257]

MESNE PROFITS—continued**3 MODE OF ASSESSMENT AND CALCULATION—continued**

120. *Remission of rent or neglect to make collection*—The rule for the assessment of mesne profits is, that the right of the true owner is to all the profits of the land and not merely to the amount of the cash collections during

and charges for collection He does not lessen his responsibility by remitting rent or neglecting to make collections KALEE DEBEE v MODHOODUTY CHOWDHRY 18 W. R., 171

121. *Gross produce of estate—Value of produce.*—Mesne profits should not be estimated on the gross produce of an estate except when all other means of ascertaining them fail. The rents due from the actual cultivators, or, if he cultivate the land by his own servants, the value of the produce, should be taken as the amount of the mesne profits KHEMON KUTEE DEBIA v MODHOODUTY DEBIA 4 W. R. Mis, 23

122. *Fair and reasonable rent*—In a suit for possession and vasilat, where the plaintiff was the actual cultivator of the land and obtained a decree, it was held that the Full Bench ruling in *Asmat Koor v Indurjeet Koor*, 11 B. L. R., Sup 1st 1003 9 W. R. 416, and not that in the case of *Soudamini Debi v Anand Chandra Halder*, 7 B. L. R., 178 note 13 W. R., 37 was applicable, and that plaintiff was entitled to such fair and reasonable rent as the defendant might have derived from the land had he left it during the period of his wrongful occupancy MADHUB CHUNDER DUTT v HARADHUN PAUL 14 W. R., 294

123. *Person not himself cultivating the land*—The mode of calculation laid down in *Asmat Koor v. Indurjeet Koor*, 11 B. L. R., Sup 1st 1003 9 W. R. 416, held to be applicable also to a case where a person the wrong-doer, has not himself cultivated the land PROUDHONATH ROY v TRIPPOORA SOODERE DEBEE 10 W. R., 463

124. *Principle of assessment—Person cultivating land.*—A suit by a raiyat having been remanded with a view to the assessment of mesne profits on the principle laid down in *Santamini Debi v Anand Chandra Halder*, 7 B. L. R., 178 note 13 W. R., 37, if it was found that the plaintiff had himself cultivated the lands

reversed the decision on the ground of a later ruling in *Madhub Chander Dutt v. Haradina Paul*, 18 W. R., 294. Held that the Judge ought to have followed the course indicated by the order of remand. Held also that the special respondent, if dissatisfied with the order of remand, ought to have applied for a

MESNE PROFITS—continued.

3. MODE OF ASSESSMENT AND CALCULATION—continued.

wrong-doer. DOORGA SOONDUREE DEBIA v. SHIBU-SHUREN DEBIA 8 W. R., 101

106. ———— *Assets which might have been realized*—Amount actually collected.—Mesne profits are not limited to the amount actually collected from an estate by the judgment-debtor, but must be calculated according to the assets which might have been realized with due diligence. SMITH v. SONA BIKER 2 W. R., Mis., 10

THAKOOR DOSS ROY CHOWDHRY v. NOBIN KRISTO GHOSH 22 W. R., 128

107. ———— *Claim in plaint—Rent not received, but which might have been received*.—When a party is declared entitled to a decree for mesne profits, he is entitled not only to recover as those profits such sums as may have been collected and appropriated by others in wrongful possession, but also such sums as he would have collected had he been in possession, and which he has been prevented from collecting by having been kept wrongfully out of possession. If the plaint in a suit for mesne profits claims only rents and profits collected and received by the defendant, the plaintiff is not entitled to recover in respect of rents not received, but which by the wrongful dispossession he has been prevented from collecting; but if there is an appropriate allegation, he will be entitled to recover in respect of such rents. KOMBERUNNISA BEGUM v. HUNOONAM DOSS Marsh., 122: W. R., F. B., 40 [1 Ind. Jur., O. S., 42: 1 Hay, 288

108. ———— *Collection charges*.—The principle on which wasilat should be assessed where defendant has been compelled to relinquish possession is, that he should be made to pay that which plaintiff (decree-holder) would have enjoyed if he had not been kept out of possession by the wrongful act of defendant. ERFOONISSA CROWDRAIN v. RUKKEBOONISSA 9 W. R., 457

MOBARUK ALI v. BOISTUB CHURN CHOWDHRY [11 W. R., 25

109. ———— *Trespasser not allowed expenses of obtaining decrees for rent during the term of his possession*.—Held that a trespasser, who, after having been for some time in possession of immovable property, was ejected in execution of a decree obtained by the rightful owner, could not have allowed to him in reduction of mesne profits expenses incurred by him in obtaining decrees for rent against tenants on the property in suit. SHARFUD-DIN KHAN v. FATEHYAB KHAN [1. L. R., 20 All., 208

110. ———— *Liability on ejectment of raiyat—Loss by dispossession*.—A superior holder who dispossesses a raiyat is liable, not merely for the profit which he makes by letting out the land, but to make good the loss which the raiyat sustains by being dispossessed. HURUCK LALL SHAHA v. SREENIBASH KURMOKAR 15 W. R., 428

111. ———— *Cultivating raiyat ejected by zamindar*.—When a cultivating

MESNE PROFITS—continued.

3. MODE OF ASSESSMENT AND CALCULATION—continued.

raiyyat is ejected by his zamindar, the mere rent of the land realized by the zamindar from another tenant is not necessarily the measure of the damage sustained by the raiyat and recoverable by him as mesne profits. BHURO CHANDRA MOZOOMDAR v. BAMUNDAS MOOK-ENJEE . 3 B. L. R., A. C., 88: 11 W. R., 461

112. ———— *Sale by occupancy-tenant—Decree in favour of land-holder against purchaser for mesne profits*—Mesne profits how to be assessed.—Where in a suit against an occupancy-tenant and his vendor, the zamindar obtained a decree for cancellation of the deed of sale, for possession of the land by ejectment, and for mesne profits from the date of suit to the date of recovery of possession.—Held that the mesne profits awarded must be assessed as damages against the vendee as a trespasser, and that the proper measure of such damages was not the rent which was payable by the vendor, but the actual market value of the land for the purpose of letting. MATUK DHARI SINGH v. ALI NAQI [1. L. R., 10 All., 15

113. ———— *Rate of rent*.—In claiming wasilat for the period of wrongful dispossession, the owners are entitled to recover either any profit which the wrong-doer derived from the land or any rate of rent which they were receiving at the time of dispossession. JOY KISHEN DOSS v. TURNBULL 24 W. R., 137

114. ———— *Held that the amount of rent actually received, together with that which might with reasonable diligence have been collected, form the amount of mesne profits to which a decree-holder is entitled*. Evidence that the land was let for a certain amount is a *prima facie* proof of the amount of mesne profits, and may be accepted by the Court unless the contrary be proved. RUGHO NATH DOBEY v. HUTTEE DOBEY [1 Agra, Mis., 17

The onus being on the person in wrongful possession to show that the usual rents were not collected. OMAN v. RAM GOPAL MOZOOMDAR [18 W. R., 251

115. ———— *Proof of amount*.—Mesne profits liable in execution of a decree are the rents of an estate, *minus* costs of collection, Government revenue, losses by desertion and death of raiyats, by drought, etc. The proper means of ascertaining their amount is to require the party who has held possession, and against whom the decree has passed, to produce his accounts, and, if necessary, to compel him to do so. On him lies the onus of proving the actual amount of mesne profits, and if he fail to produce his accounts, he will only have himself to blame if the amount awarded by the Court is larger than the actual mesne profits. DINOBUNDHOO NUMDER v. KESHUB CHUNDER GHOSH [3 W. R., Mis., 25

RAMNATH CHOWDHRY v. DIGUMBER ROY [3 W. R., Mis., 30

MESNE PROFITS—continued.**3. MODE OF ASSESSMENT AND CALCULATION—continued.**

of right, but where he has entered or continued on the land without any *bond fide* belief that he was entitled so to do, the Court may refuse to allow such costs, although he may still claim all necessary payments such as Government revenue or ground rent. *Per* STUART, C.J.—Whether such trespasser is a trespasser *bond fide* or not, he should be allowed such costs. *ALTAF ALI v. LALJI MAL*

[I. L. R., 1 All, 518]

134. — — — — — *Allowance for extraordinary profits*—Where a party is decreed entitled to mesne profits, the trespasser cannot be allowed to urge that the owner would not have realized as much from the land as he (the trespasser) did, but if he had obtained extraordinary profits by the expenditure of capital on the land, allowance should be made for such expenditure. *SREENATH BOSE v. NOELIN CRUYDER BOSE*. 9 W. R., 473

135. — — — — — *Damages in-*

receives under such possession, but also for the damages incurred by the tenant whom he has ejected, in consequence of the ejection. *MARHOM AZMEL v. CHADLE LALL PANDAY*. 12 W. R., 104

136. — — — — — *Co-sharers—Decrees for and against different parties*—The

share, the deficit in each year being made good by the party who received in excess of his share. *BIJOY GOSWAMI DAIK v. HAJEE PROSVANO DAIK* [18 W. R., 294]

137. — — — — — *Co-sharers—Fair rent*—Where the parties to a suit for certain land and for the payment of mesne profits in respect of the same were co-sharers in the estate comprising such land, and the defendants had then sown, occupied and cultivated such land—*Held* that the most reasonable and fitting mode of assessing such mesne profits was to ascertain what would be a fair rent for such land if it had been let to an ordinary tenant and had not been cultivated by the defendants. *GUNOA PRASAD v. GATAPAD PRASAD*

[I. L. R., 2 All, 651]

138. — — — — — *Costs of collection of rent*—Where a suit is decreed as one for possession with mesne profits, the decree holder is not barred from a claim, the Court, under s. 197, Civil Procedure Code, to inquire into the amount of mesne profits in execution. In decreeing mesne profits a Court has no right to disallow the costs of collection on the assumption that a large zamindar can collect rents without cost. *GOORNO DOSS BEE v. ANAND MOITEE DALLA*. 15 W. R., 203

MESNE PROFITS—continued.**3. MODE OF ASSESSMENT AND CALCULATION—continued.**

139. — — — — — *Mustagiri tenures*—Where the custom of collecting rents from mustagiri prevails, the mustagiri jumma is to be the basis of account of mesne profits to be recovered from a judgment debtor. *AMMED BEZAR v. HAZAT HOSSEIN*. 1 W. R., 20

140. — — — — — *Rent left uncollected*—In a suit for mesne profits the defendant cannot have credit for rents which he has left uncollected from the raijats. *MUNHOOA v. HEEERAHAM MISSEER*. 1 Kay, 277

141. — — — — — *Value of trees cut down—Decree for mesne profits*—The value of trees cut down and appropriated by a judgment-debtor, against whom a decree with mesne profits has been given may be included in the mesne profits for which the judgment debtor, whilst in wrongful possession, is liable. *BEHEED SYOH v. SUDASEEN DUTT*. 2 W. R., 50

142. — — — — — *Suranjaries, upon what profits to be allowed*—Suranjaries should be allowed upon the amount actually collected, and not upon the net proceeds coming to the zamindar. *ERFOONISSA CHOWDHURAI v. RUKHEER-CONISSA*. 9 W. R., 457

143. — — — — — *Average of several years*—Decree of Sadler Court estimating

SOORIAN

[5 W. R., P. C, 125. 3 Moore's I. A., 12]

144. — — — — — *Id ved lands—Expenses of worship*—In the case of endowed lands, the judgment debtor is entitled to a deduction, from the amount of mesne profits ascertained to be due, of the expenses incurred by him in carrying on the worship of the idols. *THAKKOR LOSS CHARRIER CUTCHERBETTY v. SUDHIEE LHOOST v. CHATTERJEE* [17 W. R., 203]

145. — — — — — *Mesne profits on accreted land—Presumption as to quantity of land under cultivation—Evidence*—In determining the mesne profits upon alluvial land gained by accretion

certain number of lighas was cultivated land. There was no evidence, however, to show what had been the increase year by year of the area cultivated, and on this question the appellants objecting to be a tenant of the mesne profits assessed by the Court could have produced evidence consisting of the usually kept in a zamindari serishtas showing that the increase had been, but these they withheld. *Held* by the Privy Council that the fact the Courts had properly assessed them that the entire area of

MESNE PROFITS—continued.**3. MODE OF ASSESSMENT AND CALCULATION—continued.**

review, and not having done so he was not entitled to ask the Court to go behind that order and consider whether it was wrong with reference to *Madhub Chunder Dutt v. Haradhin Paul*, 14 W. R., 294. Held further that the later decision did not overrule the earlier one, but referred to a different case, viz., that of a large zamindar entitled to rent only; and that the Full Bench ruling referred to in the later decision did not intend to lay it down that a party who is himself a cultivator is not entitled to recover the profits which he would have made out of the land by his own cultivation. *NURSINGH ROY v. ANDERSON* 19 W. R., 125

125. ————— *Zerayet and bhowli lands—Production of accounts to show value and produce of land.*—The loss of the party wrongfully kept out of possession must generally be measured by the actual profits arising from the usufruct of the land during that time, on an occupation of the same character as that of the party wrongfully kept out of possession at the date of his ouster or of the last legal occupant whom the plaintiff claims to succeed to, if the plaintiff himself never entered into possession. A difference in assessment should be made between zerayet and bhowli lands, a deduction being allowed as to the former on account of expenses of cultivation. As regards the produce and value of the lands in such cases, it is the duty of the judgment-debtor to produce his accounts and to prove what were the real assets of the property. *ROOKMEE KOOR v. RAM TUNEL ROY* 17 W. R., 156

126. ————— *Suit by cultivator—Damages.*—Where the plaintiff, who was a cultivator, sued for possession of certain land, of which he had been dispossessed by the defendant, with mesne profits, and the Judge gave him a decree for possession, and as to mesne profits decreed that the plaintiff should have the actual profits realized from the land, and if that could not be ascertained (as to which the burden of proof, he said, should be on the defendant), then, according to the capabilities of the soil in an average season, making the deductions necessary on account of the bad seasons, expense of cultivation, rise and fall of prices, and cost of seed; and in the case of indigo, the value of the raw produce and not of the manufactured article;—it was held that the principle on which damages were awarded was a correct principle, where the plaintiff was himself a cultivator. *WATSON v. PYARI LAL SHAHA*

[7 B. L. R., 175]

SAUDAMINI DEBEE v. ANAND CHANDRA HALDAR

[7 B. L. R., 178 note; 13 W. R., 37]

127. ————— *Cultivator.*—Where the party recovering possession of land of which he was wrongfully dispossessed, and claiming *wasilat*, is himself the cultivator, he is entitled to recover the profits which he would have made out of the land by the cultivation had he not been dispossessed. *NUR SINGH ROY v. ANDERSON* 16 W. R., 21

SHISTEE PERSHAD CHUCKERBUTTY v. KUMLA KANT ROY 17 W. R., 348

MESNE PROFITS—continued.**3. MODE OF ASSESSMENT AND CALCULATION—continued.**

128. ————— *Amount which might have been received.*—Where one party illegally dispossesses another and lets his estate in farm, the amount of the rent which the party wrongfully ousted might have ordinarily received had he been in possession, and not the amount of the farm rents received during the wrongful possessor's incumbency, will, unless any special custom be proved, be the measure of mesne profits to be awarded. *JUGURNATH SINGH v. AHMEDOOLLAH* 8 W. R., 132.

129. ————— *Unprofitable lands.*—In executing a decree for mesne profits, a Court does right in excluding from the account lands of such a nature as would, under ordinary circumstances, yield no profit, regarding which it has not been shown that the judgment-debtors had opportunities of disposing of them for a profit. *BECHARAM DASS v. BROJONATH PAL CHOWDHRY*

[9 W. R., 369]

130. ————— *Value of produce of jalkar.*—In a suit for *wasilat*, where it was decreed that the value of the produce of a *jalkar* should be ascertained in execution, the lower Appellate Court was held to have come to a right conclusion without any error of law in taking the nearest approximate value of the produce indicated by the evidence and the plaintiff's statement. *ENABT ALI v. SOBHANATH MISSEER* 15 W. R., 259

131. ————— *Cancellation of darpadni tenure.*—A zamindar granted a *padni* to A, who granted a *darpadni* to B. The *padni* was sold for arrears of rent to C, who entered into possession, cancelled B's *darpadni*, and, after two years' possession, granted a *darpadni* to D. Meantime A, the original *padnidar*, had the sale set aside in a regular suit brought for that purpose, and thereupon B brought a suit against D alone for mesne profits. Held that D was entitled to be credited with the amount of rent which he had paid to his *padnidar*, C, and with the expenses of collection. *NUPPAR ALI BISWAS v. RAMESHAR BHUNICK* 3 C. L. R., 25

132. ————— *Decree-holder wrongfully kept out of possession.*—A decree-holder who stands in the shoes of his judgment-debtor, but who has been wrongfully kept out of possession of land for which the judgment-debtor granted a lease, is entitled to receive the profit which the judgment-debtor made out of them, and which the decree-holder would have made had he been in possession. *GOOROO DYAL MUNDUR v. GOPAL SINGH*

[24 W. R., 272]

133. ————— *Suit for mesne profits against trespasser—Costs and expenses of trespasser in collection of rent.*—Held by the majority of the Full Bench that a trespasser on the land of another should, in estimating the mesne profits which the owner of the land is entitled to recover from him, be allowed such costs of collecting the rents of the land as are ordinarily incurred by the owner, where such trespasser has entered or continued on the land in the exercise of a *bond fide* claim

MESNE PROFITS—continued.**3 MODE OF ASSESSMENT AND CALCULATION—continued**

would have been the net profits which the dispossessed owner would have earned by the cultivation during that period had he been in possession
KISHAN PERSHAD SINGH v CROWDY

[23 W R., 15

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Amount claimed less than amount proved—The Court cannot give a larger amount of mesne profits than is claimed, although more is proved
SOORIAN ROW v COTAGHERY BOOCHIAN

[5 W. R., P. C., 127 2 Moore's L.A., 113

GOOROO DOSS ROY v BUNSHEE DHUR SEIN

[15 W R., 61

KAROO LALL THAKOOR v FORBES 7 W. R., 140

152

Decree for amount larger than that claimed—A decree for

the sum decreed had been found due after two careful local investigations
PEABER SOONDUBHE DOSSER v ESHAN CHUNDER BOSE 16 W R., 302

153

Execution of decree—Amount awarded in execution larger than that claimed in plaint—Court Fees Act (VII of 1870), s. 11, para 2—The plaintiff brought a suit for possession and for a certain sum as mesne profits which he assessed at three times the annual rent

was found to be due to him for mesne profits than that claimed by him in his suit The plaintiff therefore paid the excess fee as provided by para 2 of s. 11 of Act VII of 1870 but it was held that

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Amount claimed

and obtains a decree which leaves the amount due as mesne profits to be ascertained in execution, he is not bound down to the amount claimed in his plaint; but if more is found due to him, he is entitled on payment of further Court fees to recover the larger amount so found due
Baboojan Jha v Bygnath Dutt Jha, 1 L R., 6 Calc., 474, distinguished
JADOOMCET DABER v HAFIZ MAHOMED ALI KHAN

[1 L R., 8 Calc., 235

155

Execution of decree—Amount stated in plaint—Estoppel—When, in a suit for possession of land and mesne profits at a rate stated in the plaint, a decree is

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passed which directs that the amount of mesne profits be ascertained in execution of the decree, the plaintiff is not limited to the amount or rate stated

[L L R., 9 Calc., 112. 12 C L R., 41

HUBRO GOBIND BHAKT v DIGUMBER DEBIA
 [9 W. R., 217

MILITARY AUTHORITIES, JURISDICTION OF.

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[13 B L R., 474
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See JURISDICTION—QUESTION OF JURISDICTION—GENERALLY . . . 1 Agrs., 222

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MILITARY MAX.

[1 Mad., 443

3 Mad., 359, 439

1. Jurisdiction—Act XIII of 1860—Stat 20 & 21 Vict. c. 67.—s. 6 of Act XIII of 1860 did not allow or interfere with the jurisdiction of the Military Courts of Requests established by s. 20 & 21 Vict. c. 67
SHANMOO v MEDHIA . . . 1 Mad., 443

2. Act XI of 1841—Art XII of 1842 (Military Courts Act)—Right of suit—The provisions of Art XII of 1841 apply to all the Courts established by Act XI of 1841, whether those Courts are held within or without British territory. It is immaterial on what grounds claims are presented if suit given by those Acts, when residents within territories to which the provisions are to be applied.
THE RAN v. A. D. V. V. V. . . . 3 N. W., 75

3. *See Appeal—Act XI of 1841—Art XII of 1842*—The provisions of Art XII of 1841 apply to all the Courts established by Act XI of 1841, whether those Courts are held within or without British territory. It is immaterial on what grounds claims are presented if suit given by those Acts, when residents within territories to which the provisions are to be applied.
THE RAN v. A. D. V. V. V. . . . 3 N. W., 75

MESNE PROFITS—continued.**3. MODE OF ASSESSMENT AND CALCULATION—continued.**

above mentioned had come under cultivation from the beginning of the period. **MAHAIR PERSHAD v. RADHA PERSHAD SHINGH**

[I. L. R., 18 Calc., 540

146.

Mesne profits, Ascertainment of—Deductions claimed.—Where a decree awarded mesne profits of the lands claimed in the suit, and the Court declined, in execution of the decree, to investigate questions relating to the deductions claimed by the defendant, on the ground that to do so would be "to go behind the decree," and that it was not competent to the Court to do that in executing the decree,—*Held* that the mesne profits could only be ascertained after making deductions from the gross earnings for all such payments made by the defendant as the plaintiff would have been bound to make if he had been in possession. It was therefore the duty of the Court executing the decree to inquire into the payments which the defendant alleged he had made, and also to determine the question whether, as alleged by the plaintiff, the lands forming the subject-matter of the suit were rent-free. **KACHAR ALA CHELA v. OGHADBHAI THAKARSHI. OGHADBHAI THAKARSHI v. KACHAR ALA CHELA**

[I. L. R., 17 Bom., 85

147.

Assessment of mesne profits in execution—Civil Procedure Code (Act XIV of 1882), s. 211—Local investigation by Ameen—Civil Procedure Code, ss. 392, 393—Dakhilas or rent-receipts of tenants—Rents which by ordinary diligence might have been obtained—Interest—Discretion of Court in declining to take evidence after the report.—The Court executing a decree for mesne profits commissioned an Ameen, under s. 392 of the Civil Procedure Code, to make a local investigation as to them. He was unable to obtain the rent dakhilas of tenants. He inquired as to the prevailing rates of rent for the land which he measured, and included in his estimate of the mesne profits rents which with ordinary diligence might have been obtained. Upon objections taken the questions arose: (1) whether the assessment should have proceeded only upon the rent actually realized, or the Ameen was right in taking the rent last mentioned into the account; (2) whether the evidence of the rent dakhilas was essential; (3) whether interest, not mentioned in the decree, should have been allowed; (4) whether or not evidence on the application of the objector should have been taken by the Court after return of the evidence taken in the locality by the Ameen together with his report. *Held* as to (1) that inclusion, in the assessment of mesne profits, of rents, which at the prevailing rates might have been received by ordinary diligence, was authorized by s. 211 of the Civil Procedure Code. As to (2), that the dakhilas were important evidence, but not essentially necessary. As to (3), that the expression "mesne profits" included, under s. 211, interest on them; but this could only be allowed for not more than three years from the decree, or until possession within that time. As to (4), the question must be decided on general principles in each case. In this instance judicial

MESNE PROFITS—continued.**3. MODE OF ASSESSMENT AND CALCULATION—continued.**

discretion had been rightly exercised in the Court executing the decree declining to take fresh evidence. **GRISH CHUNDER LAHIRI v. SOSHI SHIKHARSWAR ROY**

I. L. R., 27 Calc., 951
[L. R., 27 I. A., 110
4 C. W. N., 631

148.

Oudh Talukhdars' Relief Act, 1870—Interest on mesne profits.—An under-proprietor, having been dispossessed by a manager of the superior estate, appointed under the Oudh Talukhdars' Relief Act, 1870, recovered possession under a decree, and afterwards sued for mesne profits. *Held* that a person who had not himself received the mesne profits having come into possession of the talukh upon its being released from management under the above Act, would not be chargeable with sums which, as it was alleged, might have been received by way of mesne profits, but had not been received in consequence of the manager's wilful default; there being nothing to show that such talukhdar could be charged with anything more than was actually received by him. There being no rule of law obliging the Court to allow interest upon mesne profits, it is a matter for the discretion of the Court, upon consideration of the facts, whether to allow interest or not. **KISHNANAND v. PARTAB NARAIN SINGH**

[I. L. R., 10 Calc., 792; L. R., 11 I. A., 88

149.

Interest on mesne profits not given by decree—Interest not obtainable in execution—Civil Procedure Code, 1882, s. 211—Costs of collection of rents by a trespasser in possession not to be set off against mesne profits.—A plaintiff sued for cancellation of a certain lease, and for ejectment of the defendant as a trespasser, and for mesne profits with interest on such mesne profits. The decree which he obtained was a decree for cancellation of the lease and ejectment of the defendant, and ordered that mesne profits should be ascertained in the execution department, but was silent as to interest. *Held* that interest on the mesne profits could not be obtained in execution of the decree. **BURRO DURGA CHOWDHURANI v. SURUT SUNDARI DEBI, I. L. R., 8 Calc., 332, and KISHNA NAND v. KUNWAR PARTAB NARAIN SINGH, I. L. R., 10 Calc., 792; L. R., 11 I. A., 88, referred to.** *Held* also that, as the defendant had thrust himself into an estate and not acted in the exercise of a *bona fide* claim of right, he was not entitled to charge collection expenses in reduction of the mesne profits. **McARTHUR & CO. v. CORNWALL, L. R., 1892, A. C., 75, distinguished.** **ABDUL GHAFUR v. RAJA RAM. I. L. R., 22 All., 262**

150.

Experience of Judge deciding case—Evidence.—In estimating mesne profits for a period of wrongful dispossession, the lower Courts were held to have pursued an incorrect course in deciding upon the supposed personal experience of the Judges instead of upon evidence laid before them. The Court ought to have done its best to estimate, from the evidence before it, what

MINISTERIAL OFFICER—concluded

by requiring him to go to a distant Munsifi In
THE MATTER OF HURRO GOBIND BISWAS

[7 W R, 246]

8 ——— Dismissal—Ground for dis-
missal—The fact of a ministerial officer carrying on
a shop is not such an irregularity in his conduct as
to justify his dismissal IN RE KOMUL LOCHUN
BHADOORY 2 May, 674

9 ——— Ground for dis-

entrusted with any serious duty the head of that
office or Court is justified in dismissing him from
office IN THE MATTER OF THE PETITION OF FERRAH
HOSSAIN 2 May, 677

MINOR.

Col

1 EVIDENCE OF MINORITY 5894

2 LIABILITY OF MINOR OR AND RIGHT TO
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TION—ALIMENTATION BY FATHER.

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13 C L R, 112

I L R, 17 Mad, 221

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[5 B L R, 418, 557
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——— Liability of on contract

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Obtaining possession of, for
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Power of, to adopt or give per-
mission to adopt.

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——— Sale of share of—

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FAMILY—SALE OF JOINT FAMILY PRO-
PERTY IN EXECUTION ETC

1 EVIDENCE OF MINORITY

1 ——— Plea of minority, Determina-
tion of—Personal appearance ——— The
plea of minority should be decided on positive evi-
dence and not merely on the appearance of the
alleged minor KHETTERMOHUN GUPTA v. LAW-
STER GHOSH W R, 1894, 304

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[W R, 1894, 306]

MILITARY COURTS OF REQUEST

—concluded.

4. *— Civil Procedure Code, 1859, s. 114, 119.*—The Code of Civil Procedure, 1859, except so far as its provisions enact rules for appeals from Subordinate Courts, did not apply to proceedings under Act XI of 1841 (Military Court of Requests Act). These proceedings are regulated by the Act, and ss. 114 and 119 of the Civil Procedure Code do not apply. *GURDAS DASS v. MOOLAN MULL* . . . 2 N. W., 102

5. *— ss. 2, 17—Persons Residing in British Territory.*—Ss. 2 and 17 of Act XI of 1841 must be read together as regards persons amenable to Military Courts of Requests beyond British territory. *MOOLAN MULL v. GURDAS DASS* [3 N. W., 75]

6. *— s. 17—Decree by default on appearance of plaintiff.*—The term "rules by force" in s. 17 of Act XI of 1841 is to be interpreted as equivalent to "rules for the time being in force." It is not competent for a Court of Requests to pronounce a decree (by default) in favour of a defendant without considering the evidence before it. *GURDAS DASS v. MOOLAN MULL* [2 N. W., 229]

MILITARY DECORATION.

Taking pawn of, from soldier.

See ARMY ACT, 1881, s. 156.

[1 L. R., 10 Mad., 108]

MILITARY OFFICER.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—SALARY . . . 7 N. W., 331

[1 L. R., 1 All., 730]

1 L. R., 9 Mad., 170

1 L. R., 24 Cal., 102

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MILITARY MEN.

[2 B. L. R., S. N., 3]

2 Mad., 389, 439

See SUMMONS, SERVICE OF

[11 B. L. R., Ap., 43]

MINISTERIAL OFFICER.

See APPEAL—ORDERS.

[3 B. L. R., A. C., 370]

14 W. R., 328

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT, s. 15—CIVIL CASES.

[19 W. R., 148]

20 W. R., 470

1. *— Appointment.*—Act XII of 1856, s. 3—*Civil Court Ameen.*—The High Court had no authority to interfere in the case of a person who was not confirmed in an acting appointment of Civil Court Ameen for which the Judge considered some other candidate to be more fit. IN THE MATTER OF DOORGA DASS DASS . . . 17 W. R., 228

2. *— Act XVI of 1868—Power of Subordinate Judges.*—Act XVI of 1868

MINISTERIAL OFFICER—continued.

contemplated that the selection and appointment of persons to fill ministerial offices in the establishments of Subordinate Judges should be left to those Judges, the power of the Zillah Judge extending merely to the approval or disapproval of the person appointed. The latter's refusal of sanction must be based on grounds personal to the appointee; and he must not interfere and control the selection of persons so as to influence the inferior Judge towards the appointment of a particular candidate. IN THE MATTER OF THE PETITION OF OOLYUT HOSSEIN [13 W. R., 197]

3. *— Act XVI of 1868, s. 9—Munsif's Court.*—Under s. 9, Act XVI of 1868, the nomination and appointment of the ministerial officers of a Munsif's Court rested with the Munsif, subject to the approval of the District Judge. If the District Judge did not approve, he could refuse his sanction, but the law did not permit him to appoint any other person. IN THE MATTER OF RAJ COOMAR GOORIO . . . 11 W. R., 354

4. *— Act XVI of 1868, s. 9—Appointment of serishtadar.*—In the matter of the appointment of a serishtadar in a Munsif's Court, it was held to be no irregularity or impropriety on the part of a Judge to call the attention of the Munsif to a circular order of the High Court communicating the wishes of Government that preference should be given to certain discharged officers. IN THE MATTER OF ANUND CHUNDER CHUCKERBUTTY [14 W. R., 378]

5. *— Power of Judge to interfere with appointment of serishtadar by Munsif.*—Where a Munsif appointed a person as serishtadar in his Court and it did not appear that the person so appointed was in any respect disqualified for the appointment, or that his appointment was open to any sort of objection whatever, or that the Munsif had neglected any of the preliminary inquiries or formalities prescribed for such cases,—Held that it was not competent to the Zillah Judge, merely on the ground that in his opinion the claims of some other persons were superior to those of the person appointed, to remove him from the office, and to direct the appointment of a different and specified person. IN THE MATTER OF THE PETITION OF BHONRUB CHUNDER DEB . . . 7 W. R., 131

6. *— Removal of officer—Power of Zillah Judge.*—A Zillah Judge may refuse to confirm the appointment, by a Subordinate Court, of a disqualified person as a ministerial officer, or may rescind such an appointment if not made conformably to the rules prescribed by the High Court, and require the Subordinate Court to make a fresh appointment after observance of the rules. But he has no authority, after allowing an appointment to stand for nine months, to displace the person so appointed and to appoint another in his stead. IN THE MATTER OF THE PETITION OF KALLY PROSUNNO CHATTERJEA . . . 7 W. R., 224

7. *— Removal—Removal of mohurrir—Power of Zillah Judge.*—A Zillah Judge is not competent to remove a mohurrir from one Munsif without any fault of his, and to subject him to loss.

MINOR—continued.

2 LIABILITY OF MINOR ON, AND RIGHT TO ENFORCE, CONTRACTS—continued

to the minor's estate for the satisfaction of the debt *Hanooman Pershad Pandey v Munraj Koonceerree*, 6 Moore's L. A. 393 referred to. KANDHIA LAL & MUNA BAI I. L. R., 20 All., 135

Voluntary conveyance by father to son—Transaction

only, and is capable of ratification after he attains majority. A release by a minor father of all his right and interest in the ancestral property to his son held to be valid if ratified by the donor after he attained majority. *V*, a minor member of an undivided Hindu family in 1837 executed a release of his right and interest in certain ancestral property to his minor son. In 1833 the plaintiff obtained a decree against him in respect of a debt incurred subsequently to the date of the release, and he sought to attach the released property in execution of his decree. He impeached the validity of the release. *Per* RANADE J.—The property sought to be protected by the release was admittedly ancestral property, and *V*'s minor son had a half share in it, of which the minor could at any time claim partition. The release was only intended to protect *V*'s one-half share against the consequences of his own improvidence. When all existing debts were paid off and settled, *V*'s right to make a voluntary convey

Sadas v Hira Singh, I. L. R., 2 All., 809. Such transactions do not become colourable merely because in their ultimate consequences they have the effect of protecting the family property against the prospective extravagance of the settlor, or because no adequate consideration is shown to have been paid by the party benefited. *Per* FULTON, J.—Apart from s. 7 of the Transfer of Property Act, 1882, which was not in force in the Presidency of Bombay when the release of 1837 was executed, a conveyance depends on a preceding contract, and cannot be valid unless the party making it is competent to contract. Without an antecedent agreement to give and receive, there can be no transfer at all. The power to convey must depend on the power to contract. Unless it can be held that the provisions of s. 10 of the Contract Act were not meant to be exhaustive, and it was intended to leave out of consideration agreements by minors, we must hold that a minor is incompetent to contract. *Held* (by FARRAN C.J., and FULTON, J. (RANADE J., dissenting), that the release was inoperative and that the plaintiff was entitled to attach the property in execution of his decree. *By* FARRAN C.J., on the ground that it had not

MINOR—continued

2 LIABILITY OF MINOR ON, AND RIGHT TO ENFORCE CONTRACTS—continued

been ratified by *V* after he attained his majority. *By* FULTON, J., on the ground that the release was absolutely void and incapable of ratification. *Per* FARRAN C.J., and RANADE, J. (FULTON, J., dissenting).—The release was voidable only at the option of the minor (*V*), and was not void, and, if it was ratified or not repudiated by him on attaining majority, it was, in the absence of fraud, a valid transaction, at least as against judgment-creditors whose debts were of a subsequent date. *SADASHIV VAMAN DHAMANKAR & TRIMBAK DIVAKAR KARUNDIKAR* I. L. R., 23 Bom., 146

13 ——— Mortgage by infant whether void or voidable—*Contract Act*, s. 64—*Evidence Act*, s. 114—*Misrepresentation*.—In a suit by a puerne mortgagee against the prior as well as the subsequent mortgagee and the mortgagee's representative where the subsequent mortgagee disputed the validity of the mortgages prior to the plaintiff's mortgage, but the plaintiff did not raise any issue as to that—*Held* (1) that in a suit by a puerne mortgagee upon his mortgage a prior mortgagee is not a necessary party if such puerne mortgagee offer to redeem his mortgage. When the validity of the prior mortgage is in question, the offer to redeem should be made conditionally on the establishment of such mortgage, (2) that the question of the validity of the prior mortgages can be determined in this suit between the co-defendants. The prior mortgages were executed when the mortgagee was over 14 but under 21. A guardian of his person had been appointed under Act XL of 1868 but there was no evidence as to whether a certificate of administration had also been granted under that Act. The prior mortgagees thereupon contended (1) that under Act XL of 1868 a guardian of the person could not be appointed unless a certificate of administration was also granted and there being no evidence of the latter being granted, this appointment of a guardian of the person alone was *ultra vires* (2) that there was a fraudulent representation by the mortgagee as to his power to mortgage by which those claiming under him were stopped, (3) that the prior mortgages were not void but only voidable and that therefore the prior mortgagees were entitled to such relief as is indicated by s. 64 of the Contract Act. *Held* that assuming (but without deciding the point) that under Act XL of 1868 a guardian of the person could not be appointed unless a certificate of administration was also granted, an independent appointment of a guardian of the person might be made and there being no evidence to show that the certificate was not granted, the Court must presume the regularity of the order under s. 114 cl. (e) of the Evidence Act, (2) that with regard to fraudulent representation, it is not enough to show that the minor allowed the mortgagees to deal with

MINOR—continued.

2. LIABILITY OF MINOR ON, AND RIGHT TO ENFORCE, CONTRACTS.

2. ———— Power to contract—*Necessaries*—*Authority to third person*—*Settlement of account*.—Minors have a qualified power of contracting, and an implied or express contract for necessaries is binding absolutely on a minor. As a minor cannot himself, by reason of insufficient capacity for business, state and settle an account so as to be bound thereby, so neither can he authorize another party to do for him that which he cannot do himself. *BEKUNT-NATH ROY CHOWDHRY v. POGOSH*. 5 W. R., 2

3. ———— Voidable contract—*Act IX of 1872*, ss. 10, 11—*Bond*—*Minority of obligee*.—A contract entered into with a minor is merely voidable at the option of the minor; and there is nothing to prevent him suing thereon, supposing the contract to be otherwise valid. *SASHI BHUSAN DUTT v. JADU NATH DUTT*. I. L. R., 11 Calc., 552

See *HARI RAM v. JITAN RAM*

[3 B. L. R., A. C., 428]

4. ———— Contract by a minor.—A contract entered into with a minor is only voidable at the option of the minor. *Shashi Bhusan v. Jadu Nath Dutta*, I. L. R., 11 Calc., 552, followed. *MAHAMED ARIFF v. SARASWATI DEBYA* [I. L. R., 18 Calc., 259]

5. ———— Contract Act (IX of 1872), ss. 10 and 11—*Suit on a bond passed to a minor*.—A money-bond taken by a minor is good in law, and may be sued on. *HANMANT LAKSHMAN v. JAYRAO NARSINHA*. I. L. R., 13 Bom., 50

6. ———— Purchase from minor—*Validity of purchase*.—A purchase from a minor is not *ipso facto* invalid. *RENNIE v. GUNGA NARAIN CHOWDHRY*. 3 W. R., 10

7. ———— Pre-emption—*Guardian*.—The circumstance that a co-sharer of a village was a minor at the time of the preparation of the *wajib-ul-urz*, and that document was not attested on his behalf by a guardian or duly authorized representative, is not a reason for excluding him from the benefit of the provisions of that document relating to pre-emption. *LAL BAHADUR SINGH v. DURGA SINGH*

[I. L. R., 3 All., 437]

8. ———— Right of minor to contract—*Contract by a minor*—*Specific performance of contract*, *Right of minor to enforce*—*Contract Act (IX of 1872)*, s. 11.—A minor in this country cannot maintain a suit for specific performance of a contract entered into on his behalf by his guardian. *Flight v. Bolland, & Russ*, 298, followed. *Semble*—Having regard to the provisions of s. 11 of the Contract Act (IX of 1872), a minor in this country cannot contract at all. *Mahamed Arif v. Saraswati Debya*, I. L. R., 18 Calc., 259, and *Hanmant Lakshman v. Jayarao Narsinha*, I. L. R., 13 Bom., 50, referred to. *FATIMA BIBI v. DEBNAUTH SHAH*

[I. L. R., 20 Calc., 508]

Dissented from in *KRISHNASAMI v. SUNDARAPPAYAR*. I. L. R., 18 Mad., 415

MINOR—continued.

2. LIABILITY OF MINOR ON, AND RIGHT TO ENFORCE, CONTRACTS—continued.

and *KHAIRUNNESSA BIBI v. LOKE NATH PAL* [I. L. R., 27 Calc., 276]

9. ———— Capacity of minor to contract—*Law of domicile*—*Contract Act (IX of 1872)*, ss. 11 and 128—*Suit on bond executed by minor and not ratified on his attaining majority*—*Liability of surety of minor*.—By the law of England, the question of the capacity of a person to enter into a contract is decided by the law of his domicile. This principle of English law is adopted by s. 11 of the Contract Act. A minor cannot be sued on a bond executed by him during minority, and not ratified by him after his majority. A surety to a bond passed by a minor for moneys borrowed for purposes of litigation not found to be necessary is liable to be sued on it, whether the contract of the minor is considered to be void or voidable. *KASHIBA v. SHRIPAT NARSHIV*

[I. L. R., 19 Bom., 697]

10. ———— Bond executed by minor—*Necessaries*—*Suit against a minor on a registered bond executed by him for necessaries*—*Contract Act (IX of 1872)*, s. 68.—On the 20th April 1886, a sum of money was advanced by A to a minor, who executed a bond in respect thereof and duly registered the same. The money was required by the minor to provide for his defence in certain criminal proceedings then pending against him on a charge of dacoity, and was used by him for that purpose. On the 18th June 1892 A instituted a suit against the minor for the amount due on the bond. It was urged on behalf of the minor, who had not attained majority at the time the suit was filed, that he was not liable to A for the amount advanced; that it was not advanced for "necessaries"; that he was not liable under the bond. *Held* that, the liberty of the minor being at stake, the money advanced must be taken to have been borrowed for "necessaries" within the meaning of s. 68 of the Contract Act. In such a case the bond, being the basis of the suit, could not be ignored and treated as non-existent, and, on its being proved to have been executed by the minor in respect of money advanced for necessities, the plaintiff was entitled to a decree. *SHAM CHARAN MAL v. CHOWDHRY DEBYA SINGH PAHRAJ*

[I. L. R., 21 Calc., 372]

11. ———— Loans to a minor—*Inquiries necessary to be made by lender*—*Burden of proof*.—A plaintiff who has advanced money to relieve the necessities of a minor must make all reasonable inquiries as to the facts of such necessities, and having made such inquiries and reasonably entertaining a *bond fide* belief in the existence of such necessities, he can advance his money in safety, even though the sum borrowed by the guardian upon the security of the minor's estate is not in point of fact used for his necessities or his benefit. On the other hand, a plaintiff who lends money without such inquiries cannot thereafter successfully have recourse

MINOR—continued**2 LIABILITY OF MINOR ON, AND RIGHT TO ENFORCE, CONTRACTS—concluded**

20 ————— *Act XL of 1858, s. 18—Guardian and minor—Mortgage without the sanction of the Civil Court—Void contract—Ratification by minor—A minor cannot ratify a mortgage of his immovable property made by his guardian appointed under Act XL of 1858 without the sanction of the Civil Court such a mortgage being under s. 18 of that Act void ab initio* MAHJI RAM v. TARA SINGH **1 L. R., 3 All., 553**

21 ————— *Sale in execution of decree—Usufructuary mortgage—Right of purchaser—The acts of a minor are only voidable and not absolutely void. The purchaser of the right title and interest of a judgment debtor sued to obtain immediate possession on of the property purchased at a sale held in execution of a decree after setting aside an usufructuary mortgage executed by the judgment-debtor while a minor. Held that the sale in execution*

Held also that until a transaction by a minor was avoided by some distinct act on attaining majority it must be considered valid HARI RAM v. JITAN RAM **3 B. L. R., A. C. 426 13 W. R.**

See SASHI BRUNAN DUTT v. JADU NATH DUTT **[1 L. R., 11 Cal., 552]**

3 LIABILITY FOR TORTS

22 ————— *Responsibility of minor for his acts.—As regards torts a minor is responsible for his own acts* LUCHMON DASS v. NARAYAN **3 N. W., 191**

1. CUSTODY OF MINORS (ACT IX OF 1861 ETC.)

23 ————— *Right to choose custody—Habeas corpus Return to—A girl under sixteen*

of habeas corpus stated that a girl was under sixteen (though her mother stated she was of thirteen years and nine months) that she was of years of discretion to live under whose protection she would **IN THE MATTER OF** **THE DISTRICT** **5 B. L. R., 418**

OF KHATISA BIRI

[5 B. L. R., 557]

Application for custody of the child of 12 years—2—In the exercise of jurisdiction—in the matter of the custody of the child on appeal to the Civil Court appeal to the High Court must be quashed.

MINOR—continued**4. CUSTODY OF MINORS (ACT IX OF 1861, ETC.)—continued**

The application should have been made in the principal Civil Court of original jurisdiction in the district HARASUNDARI BAISTABI v. JATADURGA BAISTABI **4 B. L. R., Ap., 36**

S. C. HURO SOONDURKE BOLSTORRE v. JOY DOORGA BOLSTORRE **13 W. R., 112**

KRISHO CHUNDER ACHARJEE v. KASHEE THAKOOR BANER **23 W. R., 340**

25 ————— *Act IX of 1861—Construction of Act—Principal Civil Court of original jurisdiction—Semble—In Act IX of 1861 the principal Civil Court of original jurisdiction in the district means the principal Court of ordinary original civil jurisdiction* RAM HUNSEE KOOMAREE v. SOOBH KOOMAREE **2 Ind. Jur., N. S., 193**

S. C. RAM HUNSEE KOOMWAREE v. SOOBH KOOMWAREE **7 W. R., 321**

[3 W. R., Rec Ref., 5]

27 ————— *European British*

detained by their mother the parties being European British subjects—*Held that such Judge had no power to entertain the application* **IN THE MATTER OF THE PETITION OF SHANON** **2 N. W., 79**

28 ————— **SS 134—District Judge Jurisdiction of—Civil Procedure Code s. 17**

of a minor alleging that the minor had by the acts and with the connivance and assistance of the defendants at Allahabad been removed from the plaintiff's custody and guardianship at Allahabad and praying for the minor's restoration thereto. At the time when the application was made the minor was at Calcutta. Held that under ss. 1 and 4 of Act IX of 1861, read with s. 17 of the Civil Procedure Code the application was cognizable by the District Judge of Allahabad where the cause of action arose; and that even apart from s. 17 of the Code the minor having been in the custody and guardianship of a person within the jurisdiction of the Judge of Allahabad that officer had full jurisdiction to deal with the application. Under s. 3 of Act IX of 1875 (the Indian Majority Act) a person under the age of eighteen is a minor within the meaning of Act IX of

MINOR—continued.**2. LIABILITY OF MINOR ON, AND RIGHT TO ENFORCE, CONTRACTS—continued.**

Court felt bound to hold, though dissenting from the same, that the mortgages were only voidable, but held on the facts that the mortgages were avoided by the mortgagor. *Satbhiman Dutt v. Jadunath Dutt*, I. L. R., 11 Cal., 572; *Mahomed Arif v. Saraswati Datta*, I. L. R., 18 Cal., 259, doubted; and (4) that such rights as might be created under s. 64 of the Contract Act could not be enforced between the co-defendants in this suit. *RAJ COOMAR v. PRAO MADHRA NARAY* . . . I C. W. N., 453

14.**Liability of minor in equity**

—*Representations as to age known to be false—Action on the contract—Action framed in tort—Right of suit—Costs.*—Where an infant obtained a loan upon the representation (which he knew to be false) that he was of age,—*Held* that no suit to recover the money could be maintained against him, there being no obligation binding upon the infant which could be enforced upon the contract either at law or in equity, but that the defendant should not be allowed costs in either Court. *DHANVALL v. RAM CHANDER GHOSH* . . . I. L. R., 24 Cal., 285 [1 C. W. N., 270]

15.**Fraudulent representation**

by minor that he was of age—*Mortgage.*—A sum of money was advanced to a minor by a mortgagee, secured by a mortgage of house property, on the representation by the minor that he was of age, and the mortgagee was deceived by such false representation. *Held* that the mortgagee was entitled to a mortgage decree against the property of the infant. *Dhanvull v. Ram Chander Ghose*, I. L. R., 24 Cal., 285, distinguished and doubted. *Nelson v. Stocker*, 4 De Gex & J., 458, per Turner, L.J., applied. *SARAL CHAND MITTER v. MOHUN BIRI*

[I. L. R., 25 Cal., 371
2 C. W. N., 18, 201]

16.**Mortgage by minor—Voidable**

mortgage—Estoppel—Evidence Act (I of 1872), s. 115—Fraud—Contract Act (IX of 1872), s. 64—Restoration of benefit by minor.—The general law of estoppel as enacted by s. 115 of the Evidence Act (I of 1872) will not apply to an infant, unless he has practised fraud operating to deceive. A Court administering equitable principles will deprive a fraudulent minor of the benefit of a plea of infancy; but he who invokes the aid of the Court must come with clean hands and must establish, not only that a fraud was practised on him by the minor, but that he was deceived into action by the fraud. *Ganesh Lala v. Bapu*, I. L. R., 21 Bom., 198, dissented from. *Sarat Chunder v. Gopal Chunder Lala*, I. L. R., 20 Cal., 296; *Mill v. Fox*, L. R., 37 Ch. D., 153; *Wright v. Snow*, 2 De Gex & S. 321; and *Nelson v. Stocker*, 4 De Gex & J., 458, discussed. If money advanced to an infant on a mortgage declared void is spent by him, then there is no benefit which he is bound to restore under the provisions of s. 64 of the Contract Act (IX of 1872). *BRABMO DUTT* . . . I. L. R., 25 Cal., 616 [2 C. W. N., 330]

MINOR—continued.**2. LIABILITY OF MINOR ON, AND RIGHT TO ENFORCE, CONTRACTS—continued.**

Held (on appeal affirming the above decision)—S. 115 of the Evidence Act has no application to contracts by infants; but the term "person" in that section applies only to a person of full age and competent to enter into contracts. The words "person" and "party" in s. 64 of the Contract Act are interchangeable, and mean such a person as is referred to in s. 11 of that Act, i.e., a person competent to contract. A mortgagor employing an attorney, who also acts for the mortgagee in the mortgage transaction, must be taken to have notice of all facts brought to the knowledge of the attorney; and therefore, where the Court rescinded the contract of mortgage on the ground of the mortgagor's infancy and found that the attorney had notice of the infancy, or was put upon enquiry as to it,—*Held* (affirming the decision of JENKINS, J.) that the mortgagor was not entitled to compensation under the provisions of ss. 38 and 41 of the Specific Relief Act. *Ganesh Lala v. Bapu*, I. L. R., 21 Bom., 198, dissented from. *Mills v. Fox*, L. R., 37 Ch. D., 153, distinguished. *BRABMO DUTT v. DHABMO DAS GHOSH*

[I. L. R., 26 Cal., 391
3 C. W. N., 468]

17.**Fraudulent representation**

by minor that he was of age—*Contract by minor.*—A minor representing himself to be of full age sold certain property to A and executed a registered deed of sale. The deed contained a recital that he was 22 years of age. *Held* in a suit by him to set aside the sale on the ground of his minority that he was estopped. *GANESH LALA v. BAPU* . . . I. L. R., 21 Bom., 198

18.**Enhancement of rent,**

Effect of—Acts of mother and guardian how far binding on minor son—Kabuliat given by widow in possession to bind her son and successor to pay enhanced rent decreed against her.—A patnidar obtained decrees for the enhancement of the rent of holdings in the possession of the widow of a deceased tenant, one decree being in respect of land formerly held by the latter, and the other in respect of a holding purchased by the widow, on behalf of her minor son by the deceased, whilst the enhancement suits were pending. The widow also signed kabuliat relating to both tenancies, agreeing, as mother of the minor, to pay the enhanced rent. *Held* that, as the patnidar was entitled to sue for enhancement, and it was not to be presumed that the mother held adversely to her son; also as she had come to what she believed to be, and was, a proper arrangement, the son, on his attaining full age and entering into possession of the tenancies, was bound by the kabuliat. *WATSON & CO. v. SHAM LALL MITTER*

[I. L. R., 15 Cal., 8
L. R., 14 I. A., 178]

19.**Mortgage—Power of minor to**

take a mortgage.—*Observations by STUART, C.J., on the competency of a minor to take a mortgage.* *BEHARI LAL v. BENI LAL* . I. L. R., 3 All., 408

MINOR—continued**2 LIABILITY OF MINOR ON, AND RIGHT TO ENFORCE, CONTRACTS—concluded.**

20 ———— *Act XL of 1858*
s. 18—Guardian and minor—Mortgage without the sanction of the Civil Court—Void contract—Ratification by minor—A minor cannot ratify a mortgage of his immovable property made by his guardian appointed under Act XL of 1858, without the sanction of the Civil Court such a mortgage being under s. 18 of that Act void ab initio. MAHJI RAM v. TARA SINGH **1 L R, 3 All, 852**

21 ———— *Sale in execution of decrees—Usufructuary mortgage—Right of purchaser—The acts of a minor are only voidable and*

RAM **3 B L R, A C, 426 12 W R, 378**
See SASHI BHUSAY DUTT v. JADU NATH DUTT
[1 L R, 11 Calc, 552]

3 LIABILITY FOR TORTS

22 ———— *Responsibility of minor for his acts.—As regards torts a minor is responsible for his own acts.* LUCUMON DOSS v. NARAYAN **[3 N W, 191]**

4. CUSTODY OF MINORS (ACT IX OF 1861 ETC)

23 ———— *Right to choose custody—Habeas corpus Return to—A girl under sixteen years of age has not such a discretion as enables her by giving her consent to protect any one from the*

REMAN **QUEEN v. VAUGHAN** **IN THE MATTER OF**
GANESH SUNDARY DEVI **5 B L R, 418**

IN THE MATTER OF KHATISA BIRI
[5 B L R, 557]

24 ———— *Application for custody of minor daughter—Act XL of 1858 s. 2—In the principal Civil Court of original jurisdiction.—An application was made to a Munsif for the custody of a minor daughter, which, on appeal to the Civil Judge, was dismissed. On appeal to the High Court—Held all the proceedings must be quashed.*

MINOR—continued**4. CUSTODY OF MINORS (ACT IX OF 1861, ETC)—continued**

The application should have been made in the principal Civil Court of original jurisdiction in the district. **HARASUNDARI BAISTABI v. JAYADURG ABAISTABI** **4 B L R, Ap, 38**

S C HERO SOODPURER BOISTOBEE v. JOY DOORGA BOISTOBEE **13 W R, 112**

KRISTO CHUNDER ACHARJEE v. KASREE THAKOO RANEE **23 W R, 340**

25 ———— *Act IX of 1861—Construction of Act—Principal Civil Court of original jurisdiction—Sembli—In Act IX of 1861 the principal Civil Court of original jurisdiction in the district means the principal Court of ordinary original jurisdiction.* **RAM BUNSEE KOOMAREE v. SOOBH KOOMAREE** **2 Ind. Jur, N S, 193**

S C RAM BUNSEE KOOMAREE v. SOOBH KOOMAREE **7 W R, 321**

[3 W R, Rec Ref, 5]

27 ———— *European British Judge to a Zillah possession aged to be detained by their mother the parties being European British subjects. Held that such Judge had no power to entertain the application.* **IN THE MATTER OF THE PETITION OF SHANNON** **3 N W, 79**

the application was made the minor was at Lahore. *Held* that, under ss. 1 and 4 of Act IX of 1861, read with s. 17 of the Civil Procedure Code, the application was cognizable by the District Judge of Allahabad where the cause of action arose, and that even apart from s. 17 of the Code, the minor having been in the custody and guardianship of a person within the jurisdiction of the District Judge of Allahabad that officer had full power to deal with the application. *Under s. 3 of Act IX of 1861 (the Indian Majority Act) a person who is a minor is a minor until he attains the age of 18.* No such restriction as is contained in s. 3 of Act IX of 1861 prohibits the appointment of a guardian of any minor who is a minor under the Act. A minor applies to the Court under Act IX of 1861. Where the minor is old and unable to work from his own property, the Court

MINOR—continued.**2. LIABILITY OF MINOR ON, AND RIGHT TO ENFORCE, CONTRACTS—continued.**

Court felt bound to hold, though dissenting from the same, that the mortgages were only voidable, but held on the facts that the mortgages were avoided by the mortgagor. *Sashibhusan Dutt v. Jadunath Dutt, I. L. R., 11 Calc. 552; Mahomed Arif v. Saraswati Dabya, I. L. R., 18 Calc., 259*, doubted; and (4) that such rights as might be created under s. 64 of the Contract Act could not be enforced between the co-defendants in this suit. *RAJ COOMARY v. PREO MADHUB NUNDY* . . . **1 C. W. N., 453**

14. ——— Liability of minor in equity

—*Representations as to age known to be false—Action on the contract—Action framed in tort—Right of suit—Costs.*—Where an infant obtained a loan upon the representation (which he knew to be false) that he was of age,—*Held* that no suit to recover the money could be maintained against him, there being no obligation binding upon the infant which could be enforced upon the contract either at law or in equity, but that the defendant should not be allowed costs in either Court. *DHANMULL v. RAM CHUNDER GHOSE* . . . **I. L. R., 24 Calc., 265**
[1 C. W. N., 270]

15. ——— Fraudulent representation by minor that he was of age—Mortgage.

A sum of money was advanced to a minor by a mortgagee, secured by a mortgage of house property, on the representation by the minor that he was of age, and the mortgagee was deceived by such false representation. *Held* that the mortgagee was entitled to a mortgage decree against the property of the infant. *Dhanmull v. Ram Chunder Ghose, I. L. R., 24 Calc., 265*, distinguished and doubted. *Nelson v. Stocker, 4 De Gex & J., 453*, per Turner, *L.J.*, applied. *SARAT CHAND MITTER v. MOHUN BIBI*
[I. L. R., 25 Calc., 371]
2 C. W. N., 18, 201

16. ——— Mortgage by minor—Voidable mortgage—Estoppel—Evidence Act (I of 1872), s. 115—Fraud—Contract Act (IX of 1872), s. 64—Restoration of benefit by minor.

The general law of estoppel as enacted by s. 115 of the Evidence Act (I of 1872) will not apply to an infant, unless he has practised fraud operating to deceive. A Court administering equitable principles will deprive a fraudulent minor of the benefit of a plea of infancy; but he who invokes the aid of the Court must come with clean hands and must establish, not only that a fraud was practised on him by the minor, but that he was deceived into action by the fraud. *Ganesh Lal v. Bapu, I. L. R., 21 Bom., 198*, dissented from. *Sarat Chunder v. Gopal Chunder Laha, I. L. R., 20 Calc., 296; Mill v. Fox, L. R., 37 Ch. D., 153; Wright v. Snow, 2 De Gex & J., 453*, and *Nelson v. Stocker, 4 De Gex & J., 458*, discussed. If money advanced to an infant on a mortgage declared void is spent by him, then there is no benefit which he is bound to restore under the provisions of s. 64 of the Contract Act (IX of 1872). *DHARMO DASS GHOSE v. BRAHMO DUTT* . . . **I. L. R., 25 Calc., 618**
[2 C. W. N., 330]

MINOR—continued.**2. LIABILITY OF MINOR ON, AND RIGHT TO ENFORCE, CONTRACTS—continued.**

Held (on appeal affirming the above decision)—S. 115 of the Evidence Act has no application to contracts by infants; but the term "person" in that section applies only to a person of full age and competent to enter into contracts. The words "person" and "party" in s. 64 of the Contract Act are interchangeable, and mean such a person as is referred to in s. 11 of that Act, i.e., a person competent to contract. A mortgagor employing an attorney, who also acts for the mortgagee in the mortgage transaction, must be taken to have notice of all facts brought to the knowledge of the attorney; and therefore, where the Court rescinded the contract of mortgage on the ground of the mortgagor's infancy and found that the attorney had notice of the infancy, or was put upon enquiry as to it,—*Held* (affirming the decision of *JENKINS, J.*) that the mortgagor was not entitled to compensation under the provisions of ss. 38 and 41 of the Specific Relief Act. *Ganesh Lal v. Bapu, I. L. R., 21 Bom., 198*, dissented from. *Mills v. Fox, L. R., 37 Ch. D., 153*, distinguished. *BHROMO DUTT v. DHARMO DAS GHOSE*
[I. L. R., 26 Calc., 381]
3 C. W. N., 468

17. ——— Fraudulent representation by minor that he was of age—Contract by minor.

A minor representing himself to be of full age sold certain property to A and executed a registered deed of sale. The deed contained a recital that he was 22 years of age. *Held* in a suit by him to set aside the sale on the ground of his minority that he was estopped. *GANESH LAL v. BAPU* . . . **I. L. R., 21 Bom., 198**

18. ——— Enhancement of rent, Effect of—Acts of mother and guardian how far binding on minor son—Kubuliati given by widow in possession to bind her son and successor to pay enhanced rent decreed against her.

A patnidar obtained decrees for the enhancement of the rent of holdings in the possession of the widow of a deceased tenant, one decree being in respect of land formerly held by the latter, and the other in respect of a holding purchased by the widow, on behalf of her minor son by the deceased, whilst the enhancement suits were pending. The widow also signed kubuliatis relating to both tenancies, agreeing, as mother of the minor, to pay the enhanced rent. *Held* that, as the patnidar was entitled to sue for enhancement, and it was not to be presumed that the mother held adversely to her son; also as she had come to what she believed to be, and was, a proper arrangement, the son, on his attaining full age and entering into possession of the tenancies, was bound by the kubuliatis. *WATSON & CO. v. SHAM LAL MITTER*
[I. L. R., 15 Calc., 8]
L. R., 14 I. A., 173

19. ——— Mortgage—Power of minor to take a mortgage.—Observations by *STUART, C.J.* on the competency of a minor to take a mortgage. *BHAKRI LAL v. BENI LAL* . **I. L. R., 3 All., 408**

MINOR—continued.**5 REPRESENTATION OF MINOR IN SUITS**
—continued.

his minor brother, under Act XL of 1858, s. 3.
NABADWIP CHANDRA SIKKAR v. KALINATH PAL
 [3 B. L. R., Ap, 130]

38. ————— *Objection to minor's representative*—Where a suit was brought by a manager, appointed by the Court of Wards on behalf of an infant who had a right to sue, an objection to the manager's authority was disallowed as merely technical. **HARDI NARAIN SAHU v. RUDER PERKASH MISSEH**. I. L. R., 10 Calc, 627 [L. R., 11 I. A., 26]

sure, as next friend in a suit **ABDUL BAKI v. RASH BEHARI PAL** 6 C. L. R., 413

40. ————— *Suit to set aside alienation affecting minor's interests—Mad Reg. of 1804, s. 8—Manager appointed under Regulation—Collector—Next friend of minor.*—The holder of an impartible zamindari governed

restrict the
 friend of a
 a. 8 BRES-
 Mad., 197

41. ————— *Married woman—Next friend—Civil Procedure Code (Act III of 1882), s. 115*—A married woman may act as the next friend of an infant plaintiff. **Guru Pershad Singh v. Gossain Munraj Puri**, I. L. R., 11 Calc, 733, overruled **ASIRAM BIBI v. SHAHID MONDEL** [I. L. R., 17 Calc., 488]

42. ————— *Suit by minor in Mamlatdar's Court for possession—Mamlatdars' Courts Act (Bom. Act III of 1876)—Right to sue by next friend.*—A minor may sue for possession in the Mamlatdar's Court by his next friend, although the Mamlatdars' Courts Act (Bombay Act III of 1876) makes no provision for such a suit. **DATTATRAYA KESHAB v. VAMAN GOVIND** [I. L. R., 21 Bom., 88]

MINOR—continued.**5. REPRESENTATION OF MINOR IN SUITS**
—continued

43. ————— *A minor may sue or be sued in a Mamlatdar's Court in a suit for possession, if he is represented by a properly constituted guardian* **SAIVULLA v. HARI MAYA** [I. L. R., 24 Bom., 238]

44. ————— *Improper representation of minor—Effect on proceedings*—Where on appeal the Court was of opinion that certain minors

PRESHAD SINGH v. GOSSAIN MUNRAJ PURI
 [I. L. R., 11 Calc, 733]

45. ————— *Representation of minor heirs as defendants by including Collector*

sons, even if the Collector could only treat, under Regulation V of 1804, the particular minor on whose behalf the Court of Wards was then managing the zamindari as their proper ward. Consequently, a suit brought by one of such minors on his attaining majority, to set aside the sale of a portion of the zamindari property attached in execution of the decree given in the former suit is barred by ss. 136, 244, and 312 of the Civil Procedure Code **SUBRAMANYA PANDYA CHOLKA TALAVAR v. SIVA SUBRAMANYA PILLAI** I. L. R., 17 Mad., 318

46. ————— *Application for execution not being properly made—Objection not taken at proper time disallowed where minor after-*

tained. **Bhoopendro Narain Dutt v. Baroda Prasad Roy Chowdhry**, I. L. R., 18 Calc, 500, distinguished **NOBENDRA NATH PAHARI v. BHUPENDRO NARAIN RAI** I. L. R., 23 Calc, 374

47. ————— *Representation of minor by party not authorized to consent to decree—Invalid decree against minor on an alleged consent—Proof of authority to litig. minor by*

MINOR—continued.**4. CUSTODY OF MINORS (ACT IX OF 1861, ETC.)—continued.**

minor's elder brother had been maintaining and educating the minor at his own expense.—*Held* that, under the circumstances, the brother was competent to apply under s. 1 of Act IX of 1861, and to ask for a certificate of guardianship. The words in s. 3 of Act IX of 1861, "and thereupon proceed to make such order as it shall think fit in respect to the custody or guardianship of such minor," confer on the Court an absolute discretion to make an order as to custody or guardianship, or to refrain from making such an order where the circumstances do not call for such an order being made. Where a minor Hindu over the age of sixteen, who had embraced Christianity and left the house of his elder brother by whom he had been maintained and brought up, appeared to be well able to take care of and provide for himself, and preferred to be left as he was, and had sufficient mental capacity to judge what was best for himself, the Court refused to make any order upon an application by the brother for his custody and guardianship. **SARAT CHANDRA CHAKRABATI v. FORMAN**

[I. L. R., 12 All., 213]

29. — s. 7—Act XL of 1858,

s. 12—Jurisdiction of Civil Court.—Where application was made under Act IX of 1861, and an estate was taken charge of by the Collector under s. 12, Act XL of 1858, the interference of the Civil Court was held to be precluded alike by the former Act (s. 7) and by the latter. **MOHESUR ROY v. COLLECTOR OF RAJSHAHYE** . 16 W. R., 263

30. — Wife—Outcast

for criminal offence.—P, whose minor wife had refused to return to cohabitation with him on the ground that he was out of caste in consequence of having committed a criminal offence, applied to the District Court under Act IX of 1861 for the custody of her person. *Held* that that Act did not apply to such a case. **PAKHANDU v. MANIKI** . I. L. R., 3 All., 509

31. — Wife—Dispute

on fact of marriage.—Where a person claims the custody of a female minor on the ground that she is his wife, and such minor denies that she is so, Act IX of 1861 does not apply. Such person should establish his claim by a suit in the Civil Court. **BALMAKUND v. JANKI** . I. L. R., 3 All., 403

32. — Jurisdiction of

District Judge—Marriage—Injunction.—The paternal uncle of a female Hindu minor, whose father was dead, applied to the District Judge, under Act IX of 1861 for the custody of the minor and for an injunction to prevent the mother of the minor from carrying out a projected marriage. On the 8th of March 1881 the Judge issued an *ad interim* injunction. When the application came on for hearing, it appeared that the marriage had taken place before the order of injunction had reached the parties. The District Judge found that, though the mother was entitled to the custody of the minor, yet the petitioner was entitled to give the minor in marriage in preference to the mother. The District Judge also found

MINOR—continued.**4. CUSTODY OF MINORS (ACT IX OF 1861, ETC.)—concluded.**

that the marriage had not in fact been validly performed. On appeal to the High Court, it was contended that the District Judge had no jurisdiction to determine the right of any party to give an infant in marriage on an application under Act IX of 1861, or to grant an injunction; and it was also contended that the Magistrate was wrong in entering into the question of the factum of the marriage. *Held* that, under the provisions of Act IX of 1861, the District Judge had jurisdiction. **BALMAKUND v. JANKI, I. L. R., 3 All., 403; Wolverhampton Waterworks, Co. v. Hawkesford, 28 L. J. (N. S.) C. P., 242; and Collector of Pubna v. Romanath Tagore, B. L. R., Sup. Vol., 680, referred to.** *Held* also that, for the purpose of deciding whether the injunction should issue, the Judge was justified in entering into the question of the factum of the marriage, though his finding on that point would have no effect in determining its validity. **IN THE MATTER OF THE PETITION OF KASHI CHUNDER SEN. BROHMOMYEE v. KASHI CHUNDER SEN**

[I. L. R., 8 Calc., 266; 10 C. L. R., 91]

5. REPRESENTATION OF MINOR IN SUITS.

33. — Disability to sue—Objection on ground of disability.—An infant cannot sue except by next friend, and where an objection is made on the ground of the disability of the plaintiff, it was held that the suit might be dismissed. **CHINNIAH v. BAUBUN SAIB** . 5 Mad., 435

34. — Civil Procedure Code, s. 443—Defence of minority—Guardian ad litem, Appointment of—Procedure.—When minority is pleaded as defence to an action, a guardian should be appointed for the defendant, and a preliminary issue should be framed and tried as to whether defendant is or is not a minor. **KASI DOSS v. KASSIR SAIB** . I. L. R., 16 Mad., 344

35. — Disability to carry on suit—Suit by minor—Next friend.—Plaintiff being a minor, his suit was not dismissed, but he was directed to appoint a next friend to sue for him. **KOLLO v. SMITH** . 1 B. L. R., O. C., 10

36. — Suit by minor whose guardian has omitted to sue.—A minor, when he comes of age, is not precluded from suing in his own name for anything that his guardian, either through ignorance or negligence, has omitted to prosecute. **KYLASH CHUNDER SIRCAR v. GOOROO CHURN SIRCAR. GOOROO CHURN SIRCAR v. KYLASH CHUNDER SIRCAR** . 3 W. R., 43

37. — Suit on behalf of minor—Act XL of 1858, s. 3—Suit of small value.—A suit can be prosecuted or defended by a relative on behalf of a minor without a certificate under Act XL of 1858 when the subject-matter of the suit is of small value. A suit to recover real and personal property of the value of Rs. 260 was allowed to be prosecuted by the brother of a minor on behalf of himself and

MINOR—continued

5 REPRESENTATION OF MINOR IN SUITS
—continued.

the same property, which suit had been dismissed. There was no evidence to show that in that suit they had assumed to act on behalf of the family, or that any one of them had been a *de facto* manager of the family property. *Held* that the plaintiffs were not sufficiently represented in the previous suit, and that therefore their present suit was maintainable. *Durgapersad v Kesho Persad*, 1 L R, 8 Cal 656 L R, 9 I A, 27, explained. *PADMAKAR VINAYAK JOSHI v MAHADEV KRISHNA JOSHI*

[1 L R, 10 Bom, 21]

52 ——— Suit against minor—Parties—Guardian—Act XL of 1868, s 3—Declaratory decree—In a suit to set aside the allegation of the defendant that her son S had been adopted by the father of the plaintiff, and had therefore inherited his property the defendant was described in the plaint as M, the mother of S and subsequently the words “a minor” were inserted after the name of S. In the proceedings in the suit the defendant designated herself as mother and guardian of S a minor, but there was nothing to show she had obtained a certificate of guardianship, or had been appointed guardian *ad litem*. The two lower Courts gave a decree for the plaintiff. On special appeal to the High Court it was contended that S ought to be a party to the suit. *Held* that the suit, as it stood, could not be treated as a suit against the minor. The

MINOR—continued

5 REPRESENTATION OF MINOR IN SUITS
—continued.

framed in accordance with the provisions of s 440 of the Civil Procedure Code. The High Court further directed that the pleader who filed the original suit and the pleaders who filed the appeal in the lower Appellate Court should be called upon to show cause, before the presiding officers of the original and the lower Appellate Courts respectively, why they should not be ordered, under s. 444 of the Civil Procedure Code, to pay the costs of the suit and the appeal. *SHONAI BEWA v MONORAM MUNDUL*

[1 C L R., 15]

55 ——— Civil Procedure Code (Act XIV of 1852), s 440—Suit by next friend on behalf of minor—Act XL of 1853, s 3—Certificate—The effect of s. 3 of Act XL of 1853, read with s. 440 of the Code of Civil Procedure, is that a minor plaintiff must not only always sue by his next friend, but, when the suit relates to the minor's estate, the person representing the minor must either hold a certificate under the Act or must obtain the sanction of the Court for the suit to proceed. The mere admission of a plaintiff by the Court does not sufficiently indicate that sanction is accorded. *DUNGA CHUNDER SHAHA v NIMONVER DASS* 1 L R, 10 Cal, 134, 13 C L R, 369

See *contra*, *AUKHIL CHUNDER v TRIPPOORA SOON DUREE* 22 W R, 525

DOSSER . . . 13 B L R, Ap, 2
S C MONGULA DOSSER v SHABONA DOSSER
[20 W R, 48]

53. ——— Sufficiency of representation—Improper representation of minor—Suit for “self and as guardian”—*Dumle*—That the fact of a suit being brought by A for self and as guardian of C, a minor is not conclusive evidence that C is not so far a party to the suit as to be bound by the decree. *Sreenarayan Mitter v Kishen Soonderry Dasse*, 11 B L R, 171, and *Mongolia Dasse v Saroda Dasse*, 12 B L R, 4p, 2, cited. *GRISH CHUNDER MOOKERJEE v MILLER* 3 C L R., 17

54 ——— Civil Procedure

headed “S B, widow of the late C B, mother and guardian of S and A, minors, appellants.” The plaintiff alleged that the plaintiff had held possession as guardian of the minor sons. *Held* that the proceeding was bad in law, the plaintiff not having been

a written permission to sue compulsory upon the next friend of an infant plaintiff. *NEWAJ v MAKSUD ALI* 1 L R, 12 Cal, 131

57 ——— Insufficient ap-
p 1577,
p 3—No
p minor

subject to the provisions of Act XL of 1853 is a party, will bind him on his attaining majority, unless he is represented in the suit by some person who has either taken out a certificate or has obtained the permission of the Court to sue or defend on his behalf without a certificate. Permission granted to sue or defend on behalf of minor, under s. 3 of Act XL of 1853, should be formally placed on the record. Ch. XLVI of the Civil Procedure Code lays down the form in which a minor should appear as a party, and this form should be strictly followed. *MEISAMOTI DABIA v JOODISHUTRI DABIA*

[1 L R, 5 Cal, 450; 5 C L R, 381]

58 ——— Suit on behalf

sue was denied by the defendant, and the first of the issues framed was whether he had such right. The Court decided that he had such right. *Held* in

MINOR—continued.**5. REPRESENTATION OF MINOR IN SUITS**
—continued.

consent—Beng. Reg. X of 1793—Manager of Court of Wards, Power of.—A decree-holder, who rests his case upon his decree having been made against a minor by consent, is under the necessity of proving that the consent was given by some one having authority to bind the minor thereby. In 1872, in the Settlement Court, a decree for land was made adversely to a minor, of whose persons, or for the suit, no guardian had been appointed. The minor's estate was under the charge of the Court of Wards, consisting, in the first instance, of the Deputy Commissioner of the district, who had appointed a manager of the estate. The mukhtear of the Court of Wards informed the Settlement Court that the manager consented to a decree, which was thereupon made in favour of the claimant. *Held* that there was no occasion to decide whether the minor was substantially a party to the suit in the Settlement Court, or whether his interests had not been prejudiced by his not having been impleaded through a guardian, or whether there had been fraud in the giving or alleging consent. But that the affirmative of the question whether the consent had been competently given on the minor's behalf was upon the defendant in the present suit, who had obtained the decree upon it. Their Lordships were of opinion that it had not been shown that the manager was authorized by the Court of Wards to give to the mukhtear authority to make the admission. It was not enough that the mukhtear was the mukhtear of the Court of Wards, and said that he had authority to admit the claimant's right. The decree of the Settlement Court was set aside on this last ground. The decision of the original Court in this suit, that the claimant in the settlement suit had not proved the title claimed by him, was also affirmed. **MUHAMMAD MUMTAZ ALI KHAN v. SHEO RUTTANGIR** . . . **I. L. R., 23 Cal., 934**
[L. R., 23 I. A., 75]

48. ——— *Wrongful admission of title against a minor—Suppression of facts by a manager appointed by the Court of Wards—Order of Settlement Court cancelled.*—At a settlement of a district in Oudh a sub-settlement was decreed in conformity with Act XXVI of 1866, which legalizes rules as to claims in respect of subordinate rights to land. The claimant alleged himself to be in virtue of a birt tenure held by him, under-proprietor of a village within the talukh of a talukhdar then a minor, whose estate was under charge of the Court of Wards, whose representative, the Deputy Commissioner of the district, had appointed a manager of the estate. This manager having reported favourably on the claim, the Deputy Commissioner sanctioned its admission; whereupon a decree for sub-settlement was made on the 30th June 1871. The present suit was brought by the talukhdar, after attaining full age, to have that decree set aside as having been obtained by fraud and collusion. That the manager was brother of the alleged birt-holder, and that he was family share-holder with him in the village, facts which the manager had suppressed, were facts proved in this

MINOR—continued.**5. REPRESENTATION OF MINOR IN SUITS**
—continued.

suit. The defendants attempted, but failed, to establish by evidence the existence of the alleged birt. *Held* that the admission in the Settlement Court in 1871 was not binding on the plaintiff, and that, even assuming that the defendants' ancestor had been in some way in occupancy before 1857, the evidence was quite insufficient to show that a grant of a perpetual under-proprietary right had been obtained. The decree of the lower Appellate Court, cancelling the Settlement Court's order, was therefore upheld. **RAM AUTAR v. MAHAMMAD MUMTAZ ALI**

[I. L. R., 24 Cal., 853
L. R., 24 I. A., 107
1 C. W. N., 417]

49. ——— *Guardian ad litem—Guardians and Wards Act (VIII of 1890), s. 53—Civil Procedure Code, s. 443, as amended by s. 53 of Act VIII of 1890.*—S. 53 of Act VIII of 1890, amending the Code of Civil Procedure, expressly requires the appointment of a guardian *ad litem*, whether or not a guardian is appointed under Act VIII of 1890. In a suit against a minor, the summons was attempted to be served on his guardian appointed under Act VIII of 1890, but no guardian *ad litem* was appointed in the suit. The suit was decreed *ex-parte*, no one having appeared for the minor. *Held* that the decree must be set aside, and the case sent back in order that the minor might be represented in accordance with law and the case retried. **DAKESHUR PERSHAD NARAIN SINGH v. REVAT MEHTON** . . . **I. L. R., 24 Cal., 25**

50. ——— *Ex-parte decree against minor—Minor's right to sue to set aside ex-parte decree—Proof of negligence on the part of the guardian.*—It is only where fraud or negligence is proved on the part of the guardian of a minor that the right to bring a suit to set aside the previous decision can be claimed by a minor or his administrator. The plaintiff, a minor represented by an administrator, sued to recover possession of two houses. With respect to one of the houses, there had been previous litigation. The plaintiff was the defendant, a minor represented by his guardian, and one of the present defendants was the plaintiff in that litigation, and an *ex-parte* decree was passed against the plaintiff. *Held* that the decision in the previous litigation barred the present claim with respect to the house which was the subject of that litigation, no negligence being proved on the part of the plaintiff's guardian therein. **HANMANTARA v. JIVUBAI**

[I. L. R., 24 Bom., 547]

See **LALLA SHEO CHURN LAL v. RAMANANDAN DOBEY** . . . **I. L. R., 22 Cal., 8**

and **CURSANDAS NATHA v. LADHAVAHU**
[I. L. R., 19 Bom., 571]

51. ——— *Effect of decree in suit brought by elder brothers—Manager.*—The plaintiffs, Hindu brothers, brought a suit for redemption. During the minority of the plaintiffs their elder brothers had brought a previous suit to redeem

MINOR—continued5. REPRESENTATION OF MINOR IN SUITS
—continued

plaintiff to produce an affidavit to the effect that the mother of the minor defendant was his guardian,

want of a formal order appointing a guardian *ad litem* was not fatal to the suit, when it appeared on the face of the proceedings that the Court had sanctioned the appointment. *Held* (O KINZALY, J. dissenting) that the fact that an order appointing a guardian *ad litem* at the instance of the plaintiff was made *ex parte* was not necessarily fatal to the suit, unless

that the appointment at the instance of the plaintiff should not be made unless the minor or his friends and relatives in whose care he may be, failed to move the Court for that purpose within a reasonable time after receiving notice of the institution of the suit. *SURESH CHUNDER WUM CHOWDHRY v JUGUT CHUNDER DEB*. I. L. R., 14 Calc., 204

65. ———— Minor, Suit against—*Misdescription in title of the plaintiff and in decree.* Effect of—In a suit brought against a minor widow as the heir of her deceased husband, she

minor defendant was described therein in the same manner. *Held* that the minor was neither a party to the original suit nor to the decree, and that no property of the minor passed upon a sale in execution of such decree. *Suresh Chunder Wum Chowdhry v Jugut Chunder Deb*, I. L. R., 14 Calc., 204, distinguished. *GANGA PLESAD CHOWDHRY v UMBICA CHURN COONDOL* I. L. R., 14 Calc., 754

66. ———— Decree against guardian of a minor—*Immaterial irregularity—*

of a debt due by her husband. *Held* that the plaintiff should be regarded as a party to the suit in which the decree executed against the land had

MINOR—continued5 REPRESENTATION OF MINOR IN SUITS
—continued

been passed, and that the present suit should be dismissed. *NATESATTAY v NARASIMNAYYAR*

[I. L. R., 13 Mad., 480]

67. ———— Suit in substance against minor—*Sale certificate, Irregular description in—Decree against widow representing her minor son—Decree, Sale of infant's share under—* A sale-certificate expressed a rent-decree to have been made against K, the widow and heiress of A, and the mother of a minor son name unknown. *Held* that this description though irregular, showed that in substance the suit was against the infant, and that the infant's share was sold under the decree. *Hari Saran Motra v Bhubaneswar Deb*, I. L. R., 16 Calc., 40 I. R., 15 I. A., 195 and *Suresh Chunder Wum Chowdhry v Jugut Chunder Deb* I. L. R., 14 Calc., 204 followed. *HEDAR PROSUNNO LAHIRI v PROTAP CHUNDER TALUKHDAR*

[I. L. R., 20 Calc., 11]

68. ———— Next friend—

horoscope, and after that inspection the plaintiff's attorney proposed that the proceedings should be amended by making the plaintiff's father her next friend. It appeared that the plaintiff was sixteen

(V of 1882) On hearing the application, the Court refused to make the order asked for. The suit had not appeared to be a *vera* one and the

found correct, then the usual course is to suspend all proceedings and to allow sufficient time to enable

MINOR—continued.**5. REPRESENTATION OF MINOR IN SUITS**
—continued.

second appeal that, although permission to sue or defend a suit on behalf of a minor should be formally granted, to be of effect, such decision might fairly be accepted as in this case a sufficient and effective permission to the uncle to sue, and he was competent to maintain such suit. *Mrinamoyi Dabia v. Jogodishuri Dabia*, I. L. R., 5 Cal., 450, referred to. *PIRTHI SINGH v. SOBHAN SINGH* I. L. R., 4 All., 1

59. ————— *Permission of Court to guardian to sue—Discretion of Court—Act XL of 1858—Civil Procedure Code (Act XIV of 1882), s. 440—Return of plaint.*—A volunteer guardian has no right to sue on behalf of a minor; the accord or refusal of permission to sue is a matter in the discretion of the Court. Where a suit is brought in violation of s. 440 of the Code of Civil Procedure, or of the provisions of Act XL of 1858, the proper course for a Court to pursue is to return the plaint, in order that the error may be rectified. *RUSSIOK DAS BAIRAGY v. PREONATH MISREE* I. L. R., 10 Cal., 102; 12 C. L. R., 405

60. ————— *Act XL of 1858, s. 3—Order granting certificate to act as guardian of minor—Obtaining a certificate—Majority Act (IX of 1875).*—When a Court, to which application has been made under s. 3 of Act XL of 1858 for a certificate, has adjudged the applicant entitled to have one, he then substantially obtains it; although it may not be drawn up or issued at the time. Having obtained such an order, he has in substance complied with the terms of the Act; in the same way as, when a plaintiff has judgment that he shall have a decree in his suit, it may be said that he has then obtained his decree. Therefore, where a minor had been represented in a suit by a person who had obtained an order for a certificate under s. 3, but had not had it issued to him, the absence of a certificate was held to be not such an irregularity as entitled the minor, on coming of age, to have the proceedings set aside on the ground that he had not been properly represented. *MUNGIRAM MARWARI v. GURSAHAI NAND. LIKUT HOSSEIN v. GURSAHAI NAND*

[I. L. R., 17 Cal., 347
L. R., 18 I. A., 195

61. ————— *Improper representation of minor—Appearance by a guardian not sanctioned—Act XL of 1858, s. 3—Act VIII of 1859—Suit against minor—Presumption when no permission recorded by Court—Misdescription of minor—Act XIV of 1882, s. 443.*—A suit was brought against a mother "for self and as guardian of A and B, minor sons of C, deceased," at a period when Act VIII of 1859 was in force. The mother had not taken out a certificate under Act XL of 1858, and no permission was recorded by the Court allowing the mother to defend on behalf of the infants under the provisions of s. 3 of that Act. A decree was made in the suit, and in execution thereof certain property belonging to A and B was sold and purchased by X, the decree-holder. Subsequently on A's coming of age, A and B, by A as his next

MINOR—continued.**5. REPRESENTATION OF MINOR IN SUITS**
—continued.

friend, instituted a suit against X and their mother to recover the property so purchased by X. Held that under the provisions of Act VIII of 1859 it was not necessary to formally record sanction to the mother to defend under s. 3 of Act XL of 1858; and that the fact of sanction having been given might be presumed by the Court, and that on the facts of the case such presumption was warranted. Held also that, though A and B were not properly described in the previous suit, it was a mere defect in form, and did not affect the merits of the case, being in accordance with the prevailing practice at the time when the suit was brought; and that there is no authority for saying that, when minors have been really sued, though in a wrong form, a decree against them would not be valid. *JOGI SINGH v. KUNJ BEHARI SINGH* I. L. R., 11 Cal., 509

62. ————— *Civil Procedure Code (1882), s. 440—Suit brought on behalf of a minor by a person other than the minor's certificated guardian—Minor not properly represented.*—Where a suit was filed on behalf of two minors by a person who was not the certificated guardian of the minors, there being a guardian duly appointed by a competent Court in existence at the time, it was held that the suit was wrongly brought, having regard to s. 440 of the Code of Civil Procedure, and that the plaint should have been returned for amendment, and that the defect in the form of the suit was not cured by the fact, if it was one, that the person appearing therein as guardian of the minors was the karta of a joint Hindu family of which all the plaintiffs were members. *Beni Ram Bhutt v. Ram Lal Dhukri*, I. L. R., 13 Cal., 189, referred to. *SHAM KRISHNA v. RAM DAS* I. L. R., 20 All., 162

63. ————— *Objection to description of minor—Permission to sue, Proof of—Civil Procedure Code, ss. 440, 578—Act XL of 1858, s. 3.*—Although the proper and regular manner of giving permission to sue on behalf of a minor is by an order recorded in the order-sheet, there is, nevertheless, nothing in the nature of the sanction provided by s. 3 of Act XL of 1858 which takes it out of the general rule of evidence that sanction may be proved by express words or by implication. Where on a construction of the plaint and the pleadings it is found that the minor is the real plaintiff, the mere fact of his not having been properly described in accordance with s. 440 of the Civil Procedure Code is no ground for setting aside a decree passed in the suit. *BHABA PERSHAD KHAN v. SECRETARY OF STATE FOR INDIA* I. L. R., 14 Cal., 159

64. ————— *Error in the frame of a suit against a minor defendant, Effect of—Guardian "ad litem" how appointed—Sanction of Court without formal order, Effect of—Service of summons—Civil Procedure Code (Act XIV of 1882), ss. 100 and 443.*—The plaintiff in a suit described one of the defendants thus: "N C, guardian on behalf of her own minor son, S C." Upon the presentation of the plaint the Court directed the

MINOR—continued

5 REPRESENTATION OF MINOR IN SUITS
—continued

which the decree was passed that *G* did represent the minors as guardian for the suit, and as the decree expressly named them as sued by *G*, their guardian, the minors were expressly made parties, and were properly represented by *G* *Hari v Narayan, I L R, 12 Bom 427*, and *Hari Saran Motra v Bhudaneswar, Debi, I L R, 16 Calc, 40 I R, 15 I A, 195*, followed. *VASDEV MORBHAT KALE v KRISHNAJI BALLAL GOKHALE*

(I L R, 20 Bom, 534)

against some minors the defendants were set out in

poses of the suit. She was not, however, guardian of the property and persons of the minors under Act XL of 1858. *Held* that the minors were not parties to the suit; that the order making Sharoda guardian *ad litem* was not made in a suit in which the minors were defendants and that the suit must

such as the one above mentioned into a suit against the minor *GURU CHURN CHUCKERBUTTY v KALI KISSEN JAGORE*

I L R, 11 Calc, 402

75 ——— Suit against person of whose estate a certificate of administration is subsequently obtained—Right of guardian to

the original defendant, pleaded minority. *Held* that, notwithstanding the appointment as guardian, *A* ought not to have been made a defendant, the original defendant not being a minor when the suit was instituted *KRISHNA MONOUL SHAHA v AKBAR JUMMA KHAN*

9 C. L. R., 213

76 ——— Appearance for minor—Notice of decree—Presence of vakil—A statement in a decree that a vakil had appeared and was present in Court for a minor when the decree was made was held, in a suit to set the decree aside as being made behind his back, to be notice to the minor of the decree having been made *RUKHIAKUR BHUTTACHARJEE v KUROOJA MOYER DABER*

[25 W. R., 280]

MINOR—continued

5 REPRESENTATION OF MINOR IN SUITS
—continued

77. ——— Civil Procedure Code, s 442—S 443 of the Civil Procedure Code refers to a case where the plaint on the face of it appears to have been filed by a person who was a minor *BENI RAM BHUTT v RAM LAL DHUKRI*

(I L R, 13 Calc, 189)

78 ——— Minor, when bound by proceedings against him—Minors Act (XX of 1864), s 2—Suit by a minor one year after attaining majority to recover property sold in execution of a decree obtained against him during minority—In 1870 a creditor of the plaintiff's father brought a suit (No. 573 of 1870) against the plaintiff and obtained a money decree against him. The plaintiff was then a minor, and his estate was administered by the Collector of Ratnagiri. In this suit he was represented by his mother and guardian. At the sale held in 1871, in execution of the decree, the property in question was purchased by the defendant, who obtained possession in 1876. In 1879 the plaintiff attained majority and in 1882 he brought the present suit to recover the property from the defendant. *Held* that the plaintiff was not bound by the proceedings in suit No. 573 of 1870 as he had not been properly represented as required by s 2 of Act XX of 1864 *VISHNU KESHAU v RAMCHANDRA BHASKAR*

(I L R, 11 Bom, 130)

79 ——— Decision of Survey Officers under Boundary Act (XXVIII of 1860)—Representation by Manager appointed under Mad Reg V of 1804, s 8—A Survey Officer in 1875 held an enquiry under the Boundary Act 1860 and demarcated certain land out of a zamindari. At that time the zamindar was a minor

Held that the decision of the Survey Officer was binding on the zamindar *KAMARAJU v SECRETARY OF STATE FOR INDIA*

I L R, 11 Mad., 308

from the minor as necessary in an action brought against him by his attorney *WAYLES v DECKNOO BAEBOO*

I L R, 7 Calc, 140; 8 C. L. R., 433

tion incurred by the next friend of a minor in an action

MINOR—continued.**5. REPRESENTATION OF MINOR IN SUITS**
—continued.

the minor to have himself properly represented in the suit by a next friend. *ROTON BAI v. CHABILDAS LALLOOBHOY* . . . **I. L. R., 13 Bom., 7**

69.

Mesne profits—Decree made against a widow representing estate, enforced against a minor adopted son, through the widow as his guardian—Devolution of liability, along with estate, upon the minor, without his having been made formally a party to the decree—His similar liability in a suit for mesne profits.— A minor, who had been adopted by a widow as a son to her deceased husband, was not made a party to an appeal which she preferred after the adoption, from a decree made against her when she represented the estate. *Held* that, as liability under the decree, made when the widow fully represented the estate, devolved upon the minor on his adoption, the widow's estate being also thereupon divested, it would be right for her to continue to defend, but only as guardian of the minor. Also that, it having been for the minor's benefit that the widow as guardian should appeal from a decree, which had already diminished his estate, the minor was bound by the adverse decree of the Appellate Court, although he had not been made formally a party thereto. The principle of the decision in *Dhurm Dass Pandey v. Shamasoondery Debia*, 3 Moore's I. A., 229, referred to, and applied in this case. *Held* also that the minor, by his adoptive mother as his guardian, was liable in a suit for mesne profits, brought after the decree upon title; it being made clear that the suit for mesne profits was substantially brought against the minor. *Suresh Chunder Wam Chowdhry v. Jugut Chunder Deb*, I. L. R., 14 Calc., 204, approved. *HARI SARAN MOITRA v. BHUBANESWARI DEBI*

**[I. L. R., 18 Calc., 40
L. R., 15 I. A., 195]**

70.

Costs—Minor not represented by a next friend or guardian—Costs against such minor's estate—Application for leave to sue as pauper—Civil Procedure Code (Act XIV of 1882), ss. 441, 442, 444.— Neither s. 441 nor 442 of the Code of Civil Procedure (Act XIV of 1882) gives any authority to a Court to make a minor's estate liable for costs. *A* applied for leave to file a suit in *forma pauperis* against *B*. *B* resisted the application on the ground that *A* was a minor. The Government pleader also resisted on the ground that *A* was not a pauper. The Court, without inquiring into *A*'s pauperism, rejected the application solely on the ground that *A* was a minor, and that he was not properly represented by a next friend or guardian. The Court ordered all costs to be paid out of the minor's estate. The minor died soon afterwards. The Collector then applied to the Court to attach certain property in *B*'s hands which was alleged to form a part of the minor's estate. *B* objected, but the attachment was allowed. *Held* that the order for costs, as well as the attachment that followed thereon, were illegal and *ultra vires*. The order was clearly opposed to the provisions of s. 444 of the Code of Civil Procedure (Act XIV of 1882),

MINOR—continued.**5. REPRESENTATION OF MINOR IN SUITS**
—continued.

under which no order affecting a minor can legally be made without such minor being represented by a next friend or guardian *ad litem*. *AMICHAND TALAKCHAND v. COLLECTOR OF SHOLAPUR*

[I. L. R., 13 Bom., 234]

71.

Suit on behalf of a person alleged to be, but not in fact, a minor—Procedure to be adopted when suit is instituted through next friend on behalf of an alleged minor who is not so in fact—Plaint, Amendment of.— When a suit is instituted by a person alleging himself to be a minor, and the suit is brought through a next friend, and when it is found that the plaintiff was not at the date of the institution of the suit in fact a minor, the Court should not dismiss the suit, as the defendant can be fully indemnified by the payment of his costs. In such a case the proper remedy is for the defendant to apply to have the plaint taken off the file or amended, and if it be not amended, the next friend's name may be treated as mere surplusage, and the suit be allowed to proceed. *TAQUI JAN v. OBAIDULLA alias NANHE NAVAB*

[I. L. R., 21 Calc., 866]

NET LALL SAHOO v. KAREEM BUX

[I. L. R., 23 Calc., 686]

72.

Suit brought on behalf of a person alleged to be, but not in fact, a minor—Procedure on discovery that the plaintiff was of full age at the commencement of the suit.— A suit was instituted on behalf of a person alleged to be a minor, through her next friend. The plaintiff obtained a decree. The defendant appealed, and on this appeal the alleged minor applied to be placed on the record in her own right as respondent, stating that she had attained her majority since the institution of the suit. The affidavits, however, by which this application was supported, showed that she had been of full age at the time when the plaint was filed. *Held* that the suit must be dismissed. *Taqui Jan v. Obaidulla*, I. L. R., 21 Calc., 866, dissented from. *SHEORANIA v. BHARAT SINGH*

[I. L. R., 20 All., 90.]

73.

Representation by guardian of person, though not of estate—Bombay Minors Act (XX of 1864), s. 2—Decree binding minors.— In execution of a decree against the estate of *V*, his estate was sold, and it ultimately came into the hands of the plaintiff as purchaser, who sued for partition. It was contended that two of the defendants, parties to the suit in which the decree was passed, being then minors, were not properly represented by their mother, *G*, also a party defendant to the suit, she not having obtained a certificate of administration under Act XX of 1864, and that the decree did not therefore bind them. *Held* that s. 2 of Act XX of 1864 did not apply, as, though *G* had not obtained a certificate, she did not claim charge of the estate. *Vijkor v. Jijibhai Vaji*, 9 Bom., 313, and *Jadow Mulj v. Chhagan Raichand*, I. L. R., 5 Bom., 306, followed. *Held* also that an issue having been raised and determined in the suit in

MINOR—continued

6 CASES UNDER BOMBAY MINORS ACT
(XX OF 1864)—continued

90. ——— Natural father of minor—
Adoption—Residence of minor—The natural father
of a minor who has been adopted into another family

LAKSHMIKAI v SHRIDHAR VARDEY TALE

[I L R, 3 Bom, 1

91. ——— Foreign guardian—*Suit by*

a suit was brought by the agent of a minor's guardian
appointed by H H the Gaikwad of Baroda it was
ordered that the proceedings should be amended
by describing such agent as the next friend of the
minor, in which capacity he was then permitted to
sue MAGANBHAI PURSHOTAMADAS v VITHORA BIN
NARAYAN SHET 7 Bom, A C, 7

92. ——— Certificate of administra-
tion—*Father suing on behalf of minor son*—A
father on behalf of his minor son entitled to property
in his own right must obtain a certificate of adminis-
tration under s 2 of Act XX of 1864 SITARAM
BHAT v SITARAM GAVESH 6 Bom, A C, 250

93. ——— Widow suing on
behalf of son—A widow without a certificate of ad-
ministration under Act XX of 1864 is precluded from
bringing a suit in her own name in respect of her
minor son's property GOPAL KASHI v RAMABAI
SAHEB PATVADHAN 12 Bom, 17

94. ——— Suit against
minor—*Power of District Judge*—S 2 of Act XX
of 1864 does not prohibit a person having a claim
against a minor from bringing a suit until a certificate
of administration has been granted He may
properly bring his suit, but immediately after his
doing so he should apply to the District Judge
for the appointment of an administrator and it is
competent to the District Judge under s 8 of the Act,
to make that appointment IN RE MOTTAM RUPA-
CHAND 11 Bom, 21

not obtained a certificate of administration to the

the principal Civil Court of the district. As the

MINOR—continued.

6 CASES UNDER BOMBAY MINORS ACT
(XX OF 1864)—continued.

appointment of a fit person to have charge of the
property of the minor and to protect his estate,
the proper course for a Court, to which a plant
on behalf of a minor is presented by his friend,
is either to refuse to accept the plant, when there is
no pressing necessity for its acceptance, or in case
such pressing necessity exists, to accept the plant
and stay proceedings until the plaintiff has duly
obtained a certificate under the Act VISION v
JIVISHAI VAJI 8 Bom, 310

98. ——— Suit against
minor—A suit against a minor whose estate exceeds
Rs200 in value cannot be proceeded with unless he
be represented by a person holding a certificate of ad-
ministration under Act XX of 1864 The plaintiff may
apply to the District Judge to appoint an administra-
tor if none such has been appointed. DHONDIBA
LAKSHMAN v KUSA 6 Bom, A C, 219

97. ——— Guardian without

porting to represent the minor DAJI HIMAT v
DHIRAJRAM SADARAM I L R, 12 Bom, 18

98. ——— Guardian—Act
XX of 1864 s 2—*Procedure—Civil Procedure*
Code (Act X of 1877) s 440—Act XX of 1864 is
not superseded by Act X of 1877 Where therefore
a widow claimed to have charge of property in trust
for her minor sons it was held necessary under s 2
of Act XX of 1864 that she should obtain a certificate
of administration if the whole estate was of greater
value than Rs200 and that it was competent to
the Court if there was any pressing necessity (owing
to the operation of the law of limitation) that a suit
should be brought at once, to accept the plant and
stay proceedings until the mother had obtained a
certificate under Act XX of 1864 MUNDHUR v
SAPPA I L R, 3 Bom, 149

of a decree being passed in the minor's favour, the
Court can in the absence of an administrator under
Act XX of 1864 make such arrangements as it deems
expedient for the security of the minor's estate, as by
appointing an administrator under the Act. NAO
THAKUR v MADVAJI SADASHIV

[I L R, 3 Bom, 239

100. ——— Hindu law—
Joint family—*Unseparated minor—Certificate of*
administration of minor's share when necessary—
Manager—Three brothers belonging to a joint
Hindu family instituted a suit in the Court of a Sub-
ordinate Judge in their own names and on behalf of

MIRASIDARS

See CASES UNDER LANDLORD AND TENANT
—MIRASIDARS

See LANDLORD AND TENANT—NATURE OF
TENANCY I L R, 17 Bom, 475
[I L R, 18 Mad, 485]

MISAPPROPRIATION OF PROPERTY.

See CERTIFICATE OF ADMINISTRATION—
EFFECT OF CERTIFICATE
[5 B. L. R., 371]

See CRIMINAL MISAPPROPRIATION

See RECEIVER I L R, 17 Mad, 501
[I L R, 18 Mad, 23
I L R, 20 Mad, 224
I L R, 27 Cal, 279]

Damages for—

See HINDU LAW—JOINT FAMILY—SALE OF
JOINT FAMILY PROPERTY IN EXECUTION
OF DECREE, ETC
[I L R, 24 Cal, 672]

MISCARRIAGE.

1 ——— Causing miscarriage—*Penal Code, s 312*—The offence defined in s 312 can only be committed when a woman is in fact pregnant
QUEEN v KABEL PATIL 15 W. R, Cr, 4

2 ——— *Penal Code, s 312*
—“With child”—*Stage of pregnancy immaterial*
—A woman is with child within the meaning of s 312 of the Penal Code as soon as she is pregnant
Held therefore, where a woman was acquitted on a

[I L R, 9 Mad, 369]

3 ——— Attempt to cause miscarriage—*Penal Code s 312, 311*—In a case in which the child was full grown the Court deined to convict the accused of causing miscarriage under s 312 of the Penal Code—that section supposing expulsion of the child before the period of gestation is completed—but convicted them of an attempt to cause miscarriage under ss 312 and 311, read together
QUEEN v ARUNJA DEWA

[19 W. R., Cr, 32]

MISCELLANEOUS PROCEEDINGS

Civil Procedure Code, 1877-1883, s. 647 (Act XXIII of 1881, s 38)—*Procedure*—S 38, Act XVIII of 1861, was not intended to make the procedure and the powers of the Court which may be applicable in suits before decree applicable to proceedings in suits after decree but to provide a procedure as nearly resembling Act VIII of 1859 as possible for other cases not being suits IN THE MATTER OF THE PETITION OF JODOO MOHAR DOST
[11 W. R., 494]

MISCHIEF

See ATTEMPT TO COMMIT OFFENCE

[3 B. L. R., A. Cr, 55]

See COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES
[I L R, 21 Bom, 536]

See COMPOUNDING OFFENCE

[I L R, 23 Bom, 889]

See OFFENCE RELATING TO DOCUMENTS,

[I L R, 13 Mad., 54]

See THEFT

I L R, 15 Cal., 388

[I L R, 17 Cal., 852]

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it must be very clear before conviction that the accused has brought himself within the meaning of s 423 of the Penal Code IN THE MATTER OF THE PETITION OF RAM GHOLAM DINGH

[6 W. R., Cr, 59]

tion of some property or such a change in the property or the situation of it as destroys or diminishes its value or utility or affects it injuriously. The probable consequential damage to other property would not of itself constitute mischief. ANONYMOUS
[4 Mad., Ap, 16]

3 ——— *Penal Code, s 426*
—*Wrongful intention* In order to convict a person of the offence of mischief under s 426, Penal Code, it is for the prosecution to prove that the accused caused damage with a wrongful intent with a knowledge that he was not justified in doing it and that the party under whose orders he was acting had no real title ISSUR CHUNDER MUNDLE v ROMIL SHUKLA 25 W. R., Cr, 65

4 ——— Damage to non-existent right—*Penal Code, s 426*—*Revenue sale*—*Damage done between date of sale and grant of certificate*—*Wrongful loss to property held under incomplete title*—The damage contemplated in s 426 of the Penal Code need not necessarily consist in the infringement of an existing, present and complete right, but it may be caused by an act done now with the intention of defeating, and rendering infructuous a right about to come into existence. Any person who contracts to purchase property, and pays in a portion of the purchase-money, has such an interest in that property, although his title may not be complete or his right final and conclusive that the destruction of such property may cause to him wrongful loss or damage within the meaning of s 425 BHADRA DAS GHOSH v NARBERTHOY
[I L R., 12 Cal., 660]

5 ——— Invasion of right causing wrongful loss—*Penal Code (Act XLV of 1860), s 311-323*—*Wrongful restraint*—Where complainant had for the purpose of removal placed

MINOR—continued.**6. CASES UNDER BOMBAY MINORS ACT (XX OF 1864)—continued.**

their minor brother to set aside an alienation of the family property made by their deceased father. The Subordinate Judge ruled that one of the plaintiffs must procure a certificate of administration under Act XX of 1864, s. 2, before the suit could proceed. *Held* that no certificate was necessary. The manager of the family should be allowed to proceed with the suit as next friend of the minor, with permission, if necessary, to amend the plaint accordingly. **NAR-SINGRAY RAMCHANDRA v. VENKAJI KRISHNA** [I. L. R., 8 Bom., 395

101. *Proceeding to enforce award—Civil Procedure Code, 1859, s. 327—Bom. Act XX of 1884, s. 2.*—As proceedings taken to file and enforce an award under s. 327 of the Civil Procedure Code are of the nature of a suit within the meaning of s. 2 of Act XX of 1864, a minor must be represented in such proceedings by a person holding a certificate of administration. **VASUDEB VISHNU v. NARAYAN JAGANNATH** . . . 9 Bom., 289

102. *Guardian—Guardian of property—Guardian of person—Necessity for issue of certificate of administration in order to complete appointment of guardian of property.*—The Bombay Minors Act (XX of 1864) does not, in terms, provide for the appointment of a guardian of the property of a minor, but only for the grant of a certificate of administration, so that, until the certificate is issued, there is no such appointment of the guardian of the property as will extend the age of the minority from eighteen to twenty-one. But it is different as regards the appointment of a guardian of the person. The Act provides, in terms, for such an appointment being made, and no certificate of appointment is contemplated by the Act, on the language of which it is plain that the appointment of a guardian of the person is complete on the order of the Court being made appointing him. The plaintiff's mother, G, died in 1866 possessed of property which she had inherited from her husband. The plaintiff, who was born in 1859, was then a minor of the age of eight years. In 1867 the plaintiff's maternal grandfather obtained a certificate of administration. On his death, an order of Court was made on the 21st March 1873, appointing the Nazir of the Court administrator of the property and the plaintiff's mother-in-law the guardian of the person of the plaintiff, but no fresh certificate of administration was granted. In 1880 the plaintiff brought the present suit against the defendants to recover from them the property left by her mother. The defendants contended (*inter alia*) that the plaintiff had attained her majority in 1874, when she arrived at the age of sixteen, and that the suit was therefore barred by limitation. The plaintiff, on the other hand, contended that the Indian Majority Act (IX of 1875) was applicable, and that, under its provisions, she did not attain majority until she was twenty-one, i.e., until the year 1879, and that the present suit was therefore in time. *Held* that the suit was not barred by limitation. The Indian Majority Act (IX of 1875) was applicable (except so far as its operation

MINOR—concluded.**6. CASES UNDER BOMBAY MINORS ACT (XX OF 1864)—concluded.**

was excluded by s. 2), inasmuch as there was a guardian of the person of the plaintiff in existence both when she arrived at the age of sixteen and also when she was eighteen, and therefore the period of minority for her was extended to twenty-one years of age. **YEKNATH v. WARUBAI**

[I. L. R., 13 Bom., 285.]

103. *Act XX of 1864, s. 18—Assignment without sanction of Court.*—S. 18 of the Minors Act XX of 1864 applies only to persons to whom a certificate has been granted under that Act. An assignment of a mortgage therefore by a widow, acting as natural guardian of her minor son, but who has not obtained a certificate under the Act (XX of 1864), is not invalid because effected without the sanction of the Court. **MANISHANKAR PRANJIVAN v. BAI MULI** . I. L. R., 12 Bom., 688.

104. *Bombay Minors Act, s. 12—Surety for guardian of a minor's estate—Release of surety—Contract Act (IX of 1872), s. 130.*—Where a surety for the guardian of a minor's estate appointed under the Bombay Minors Act (XX of 1864) applied to be released from his . . . on account of the guardian's . . . of the estate,—*Held* that the very object of requiring security was to guarantee the minor's estate against such misconduct or mismanagement on the part of the guardian; that the surety therefore could not be discharged; and that s. 130 of the Contract Act (IX of 1872) was not applicable to the case. *Quære*—Whether the surety may not apply to the Court for protection against the guardian. **BAI SOMI v. CHOKSHI ISHVARIDAS MANGAT-DAS** . . . I. L. R., 19 Bom., 245.

MINORITY, DISABILITY OF—

See LIMITATION—STATUTES OF LIMITATION—ACT XXV OF 1857, s. 9.

[13 B. L. R., 445.]

See LIMITATION—STATUTES OF LIMITATION—ACT IX OF 1859, s. 20.

[13 B. L. R., 292
I. L. R., 1 I. A., 167]

See CASES UNDER LIMITATION ACT, 1877, s. 7.

See LIMITATION ACT, 1877, s. 8.
[I. L. R., 10 Bom., 241
I. L. R., 13 Mad., 236
I. L. R., 18 Mad., 436]

See LIMITATION ACT, 1877, ART. 177.
[I. L. R., 18 Mad., 484]

See MADRAS REVENUE RECOVERY ACT, s. 59 . . . I. L. R., 17 Mad., 189

Evidence of—

See EVIDENCE ACT, s. 35.
[I. L. R., 17 Calc., 849
I. L. R., 18 All., 478]

MISCELLANEOUS

Re Case of the *London and South*
—*London*

Re *London and South*—*London*
—*London* 1 L.R. 20 Q.B. 455
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MISCELLANEOUS PROCEEDINGS

Re *London and South*—*London*
—*London* 3 L.R. 20 Q.B. 455

Re *London and South*—*London*

Re *London and South*—*London*
—*London* 1 L.R. 20 Q.B. 455
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Re *London and South*—*London*

Re *London and South*—*London*
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MISCELLANEOUS

1. *London and South*—*London*
—*London* 1 L.R. 20 Q.B. 455
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2. *London and South*—*London*
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1 L.R. 20 Q.B. 455

3. *London and South*—*London*
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MISCELLANEOUS PROCEEDINGS

Civil Procedure Code, 1877, s. 52,
1877 (Act XXIII of 1877, s. 52) — *London*
—*London* 1 L.R. 20 Q.B. 455
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Re *London and South*—*London*
—*London* 1 L.R. 20 Q.B. 455

Re *London and South*—*London*
—*London* 1 L.R. 20 Q.B. 455
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Re *London and South*—*London*
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—*London* 1 L.R. 20 Q.B. 455
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5. *London and South*—*London*
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6. *London and South*—*London*
—*London* 1 L.R. 20 Q.B. 455
1 L.R. 20 Q.B. 455

MINOR—continued.

6. CASES UNDER BOMBAY MINORS ACT
(XX OF 1864)—continued.

their minor brother to set aside an alienation of the family property made by their deceased father. The Subordinate Judge ruled that one of the plaintiffs must procure a certificate of administration under Act XX of 1864, s. 2, before the suit could proceed. Held that no certificate was necessary. The manager of the family should be allowed to proceed with the suit as next friend of the minor, with permission, if necessary, to amend the plaint accordingly. *NAR-SINGRAV RAMCHANDRA v. VENKAJI KRISHNA*

[I. L. R., 8 Bom., 395]

101. *enforce award—Civil Procedure Code, 1859, s. 327*
—*Bom. Act XX of 1884, s. 2.*—As proceedings taken to file and enforce an award under s. 327 of the Civil Procedure Code are of the nature of a suit within the meaning of s. 2 of Act XX of 1864, a minor must be represented in such proceedings by a person holding a certificate of administration. *VASUDEH VISHNU v. NARAYAN JAGANNATH*

9 Bom., 289

102. *Guardian of property—Guardian of person—Necessity for issue of certificate of administration in order to complete appointment of guardian of property.*—The Bombay Minors Act (XX of 1864) does not, in terms, provide for the appointment of a guardian of the property of a minor, but only for the grant of a certificate of administration, so that, until the certificate is issued, there is no such appointment of the guardian of the property as will extend the age of the minority from eighteen to twenty-one. But it is different as regards the appointment of a guardian of the person. The Act provides, in terms, for such an appointment being made, and no certificate of appointment is contemplated by the Act, on the language of which it is plain that the appointment of a guardian of the person is complete on the order of the Court being made appointing him. The plaintiff's mother, G, died in 1866 possessed of the property which she had inherited from her husband. The plaintiff, who was born in 1858, was then a minor of the age of eight years. In 1867 the plaintiff's maternal grandfather obtained a certificate of administration. On his death, an order of Court was made on the 21st March 1873, appointing the Nazir of the Court administrator of the property and the plaintiff's mother-in-law the guardian of the person and the plaintiff, but no fresh certificate of administration was granted. In 1880 the plaintiff brought a present suit against the defendants to recover the property left by her mother. The defendants contended (*inter alia*) that the plaintiff attained her majority in 1874, when she arrived at the age of sixteen, and that the suit was therefore barred by limitation. The plaintiff, on the other hand, contended that the Indian Majority Act (IX of 1875) was applicable, and that, under its provisions, she did not attain majority until she was twenty-one, and therefore in time. Held that the suit was not barred by limitation. The Indian Majority Act (IX of 1875) was applicable (except so far as its operation

MINOR—concluded.

6. CASES UNDER BOMBAY MINORS ACT
(XX OF 1864)—concluded.

was excluded by s. 2), inasmuch as there was a guardian of the person of the plaintiff in existence both when she arrived at the age of sixteen and also when she was eighteen, and therefore the period of minority for her was extended to twenty-one years of age. *YEKNATH v. WARUBAI*

[I. L. R., 13 Bom., 285]

103. *Assignment without sanction of Court.*
—S. 18 of the Minors Act XX of 1864 applies only to persons to whom a certificate has been granted under that Act. An assignment of a mortgage therefore by a widow, acting as natural guardian of her minor son, but who has not obtained a certificate under the Act (XX of 1864), is not invalid because effected without the sanction of the Court. *MANISHANKAR PRANJIVAN v. BAI MULI*

I. L. R., 12 Bom., 686.

104. *Bombay Minors Act, s. 12—Surety for guardian of a minor's estate—Release of surety—Contract Act (IX of 1872), s. 150.*—Where a surety for the guardian of a minor's estate appointed under the Bombay Minors Act (XX of 1864) applied to be released from his obligation as surety on account of the guardian's maladministration of the estate,—Held that the very object of requiring security was to guarantee the minor's estate against such misconduct or mismanagement on the part of the guardian; that the surety therefore could not be discharged; and that s. 130 of the Contract Act (IX of 1872) was not applicable to the case. *Quere*—Whether the surety may not apply to the Court for protection against the guardian. *BAI SOMI v. CHOKSHI ISHVARDA MANGALDAS*

I. L. R., 19 Bom., 245.

MINORITY, DISABILITY OF—

See LIMITATION—STATUTES OF LIMITATION—ACT XXV OF 1857, s. 9.
[13 B. L. R., 445]

See LIMITATION—STATUTES OF LIMITATION—ACT IX OF 1859, s. 20.
[13 B. L. R., 292
I. L. R., 1 I. A., 187]

See CASES UNDER LIMITATION ACT, 1877, s. 7.

See LIMITATION ACT, 1877, s. 8.
[I. L. R., 10 Bom., 241
I. L. R., 13 Mad., 236
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See LIMITATION ACT, 1877, art. 177.
[I. L. R., 18 Mad., 484]

See MADRAS REVENUE RECOVERY ACT, s. 59.
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Evidence of—

See EVIDENCE ACT, s. 35.
[I. L. R., 17 Calc., 849.
I. L. R., 18 All., 478]

MISCHIEF—continued.

S. C. QUEEN v. DINGO BUNDROO BEWAS

[12 W. R., Cr., 1

18. — Pulling up stakes lawfully placed at sea within territorial limits—*Penal Code, ss. 425 and 427.*—Where certain of the

a neighbouring village, it was held that the Penal Code was the substantive law applicable to the case and that the offence amounted to mischief within the meaning of ss. 425 and 427 of that Code. *REVENUE KASTHA BAMA* 8 Bom., Cr., 63

19. — Opening irrigation sluice at wrong time—*Penal Code, s. 425*—The defendants were convicted of mischief under the following circumstances. During certain seasons of the year they received water through a sluice for the irrigation of their lands. At another season the sluice was closed and the water allowed to flow to the lands of other cultivators. This arrangement was prescribed by the revenue authorities and the defendants

the defendants within the meaning of s. 425 of the Penal Code. *ANONYMOUS* 7 Mad., Ap., 39

be likely to cause, wrongful loss, and that, as the house and garden on which the accused was engaged would be the first to be swept away in the event of the dreaded breach in the bund and consequent irruption of the river, such guilty knowledge or intent could not reasonably be inferred on his part. *IN THE MATTER OF THE PETITION OF PLAN NATH SHARMA. IN THE MATTER OF THE PETITION OF ROMA NATH BANERJEE* 25 W. R., Cr., 69

right. *KAMARISHNA CHETTI v. PALANIANDI KUDAMBAI* I. L. R., 1 Mad., 202

22. — Causing diminution of water-supply—*Penal Code, s. 430*—Water-course.—Where upon the evidence it appeared that the complainant was the exclusive owner of a water-course, and that the accused had no sort of right

MISCHIEF—continued.

to assert any claim to it, the accused's destruction of the supply of water by the accused's act within the meaning of a public well was held to be only an additional wrong, and to constitute mischief within the meaning of s. 430 of the Penal Code. *REVENUE KASTHA BAMA* 8 Bom., Cr., 63

23. — Damage to bridge through floating logs.—The accused were convicted of mischief. The acts were that whilst the accused were employed to labour under a contract some of the logs struck against the arch of the bridge. Held that the offence was not mischief. 5 Mad., Ap., 40

24. — Erection by one joint owner of edifice without consent of others.—*Lead & Dig joint owners—Penal Code, s. 430.*—Wrongful loss.—A joint owner of a parcel of land erected on it an edifice without the consent and against the will of B another joint owner. A dis-

the edifice had been erected B then brought a suit in the Civil Court to establish his title to joint possession of the whole parcel and for a declaration that A was and he moved went on charged commit subsequently the accused found the men in the employ of A were putting up this erection, a nautika, again, and accordingly protested against its erection, pulled down the bamboos thrust aside the

further per *CUNNINGHAM, J.* that the acts of the complainant in erecting the nautika amounted to mischief, and came within the purview of s. 425 of the Penal Code. *KUMARAS v. RAJAGOPALAN*

I. L. R., 3 Cal., 573; 1 O. L. R., 382.

[2 O. L. R., 63

25. — Destruction of animals.—*Right to skin of animals—Police regulations—Custom—If its death offence of justice its skin according to the custom of the country* *QUEEN v. VALLABH* 10 Ind. P. 100

[I. L. R., 8 Bom., 235

26. — Destruction of immovable document—*Penal Code, s. 426.*—The destruction of a document containing an agreement void & immorally may constitute the offence of mischief within the meaning of s. 426 of the Penal Code. *QUEEN v. VIJAY* I. L. R., 3 Mad., 401

MISJOINDER—continued

fact been dealt with as holders of separate tenures
LALUN MONER r SONA MONER DABEE

[22 W R, 334]

6 ————— Suit against

der **DOORDA PERSHAD r SHEORAJ SINGH**

[5 N. W, 222]

profits earned subsequently to his death or to be
 earned by the firm so long as it continued to carry on

the subsequent profits The testator's estate had
 proved insolvent, and previously to the filing of this
 suit an administration suit had been filed by creditors
 By a decree made in that suit on the 23rd
 January 1883 a receiver had been appointed, who
 was made
 present
 defendant
 being on
 the testator's estate up to the date of his death
Held (1)
 might h.
 estate,
 as a pla

8 ————— Plaintiffs having
 separate interests—In a suit by two plaintiffs for

insufficient to put them out of Court **JUGOBUNDHOO
 DUTT r MASEYK**

W. R, 1884, 81

as that of D alone **SREERAM HAZRAN r GYANAM
 HATEK**

11 W. R., 507

10 ————— Suit by mort-
 gagee to recover possession of mortgaged property.—

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MISJOINDER—continued

In a suit by a mortgagee for possession of the mort-
 gaged property, on the allegation that some of the

was right in joining all the defendants in the suit
BAL KISHEN MAHAPATTUR r DISTOO CHURY

[22 W R, 53]

11. ————— Suit to cancel
 mortgage and deed of sale—A registering officer ha-
 ving refused to register a deed of sale of certain pro-
 perty executed by S in favour of B, B sued S and
 K claiming the completion of the sale with delivery
 of the sale-deed duly executed and possession of the
 property by cancellation of a deed of mortgage of the
 same executed in K's favour by S *Held* the suit
 was bad for misjoinder **BEHARI LAL r KUNDALAL**

7 N W, 10

12. ————— Owners of
 separate holdings once joint—A suit to recover
 possession of an estate brought by two plaintiffs

[2 N W, 30]

13. ————— Separate interests
 in subject-matter of suit—B owned one-third
 an estate, and P B, and S owned another third
 jointly. In a suit in which R, P, B and S, join

[1 L. R., 4 All, 26]

14. ————— Suit for confir-
 mation of possession of land not in joint possession.
 The plaintiffs alleged that certain of their lands had
 been wrongly recorded in some settlement papers
 belonging to the defendants but declared themselves
 to be still in possession of them, and prayed that the
 records be corrected
Held the de-
 fendants' alleg-
 ation that the
 lands had been recorded as jointly belonging to the de-
 fendants, nor was such the case *Held* that under such
 circumstances the plaintiffs had no such cause
 of action in the matter of the suit against the
 defendants as would justify the course taken in suit
 against them all together. **GUNGA RAI r SAKSENA BEGUM**

[5 N W, 7]

15. ————— Suit for pre-emption—Three several sales of separate shares in the
 same mahal were the subject-matter of the deed of
 sale in a suit for pre-emption, and the purchasers of
 one of the shares and the purchaser of the other two
 shares were different persons, and the plaintiffs
 claimed the right of pre-emption in respect of all the
 shares, and indiscriminately implicated all the several
 vendors and vendees, who had no community

MISDIRECTION.

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE.

[4 C. W. N., 166, 576

I. L. R., 27 Calc., 172

I. L. R., 21 Calc., 955

See CASES UNDER CHARGE TO JURY—MISDIRECTION.

See PRIVY COUNCIL, PRACTICE OF—CRIMINAL CASES

I. L. R., 15 All., 310

[I. L. R., 22 Bom., 528

See CASES UNDER REVISION—CRIMINAL CASES—VERDICT OF JURY AND MISDIRECTION.

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS.

[23 W. R., Cr., 21

I. L. R., 9 All., 420

I. L. R., 14 Mad., 36

I. L. R., 23 Calc., 252

MISJOINDER.

See ADMINISTRATION . 15 B. L. R., 296
[I. L. R., 26 Calc., 891

See APPELLATE COURT—OTHER ERRORS AFFECTING OR NOT MERITS OF CASE.

[6 Bom., A. C., 177

7 Bom., A. C., 19

23 W. R., 408

13 W. R., 176

I. L. R., 10 Calc., 1061

I. L. R., 15 All., 380

I. L. R., 24 Calc., 540

I. L. R., 17 Mad., 122

See CASES UNDER COSTS—SPECIAL CASES—MISJOINDER.

See CRIMINAL PROCEEDINGS.

[I. L. R., 28 Calc., 7, 10

See HINDU LAW—JOINT FAMILY—POWERS OF ALIENATION BY MEMBERS—OTHER MEMBERS . I. L. R., 1 Calc., 226

See CASES UNDER JOINDER OF CAUSES OF ACTION.

See CASES UNDER MULTIFARIOUSNESS.

See SLANDER.

[15 B. L. R., 161, 166 note

See SPECIFIC RELIEF ACT, s. 27.

[I. L. R., 1 All., 555

See WRONGFUL DISTRAINT.

[I. L. R., 25 Calc., 285

1. ——— Misjoinder of parties—*Suit for account from different dates against two persons.*—In a suit for an account against *A* and *B* as agents, the plaintiff asked for an account as against *A* from 1265 (1858) to 1283 (1876), and as against *B* from 1281 (1874) to 1283 (1876). *Held* that there had been no misjoinder. *DEGAMBER MITTER v. KALLYNATH ROY* I. L. R., 7 Calc., 654

S. C. DEGUMBER MOZUMDAR v. KALLYNATH ROY
[9 C. L. R., 265

MISJOINDER—continued.

2.

Suit on bond not pledging lands.—Plaintiff sued on a simple money-bond for the recovery of a sum of money lent by him to *R A*, a female, whose estates were under the management of a Court of Wards, and he made co-defendants in the suit certain other parties whom he charged with endeavouring to have the estates of *R A* transferred to them. He also tendered in evidence another bond, by which *R A*, the principal defendant, purported to secure a further advance, and to pledge her zamindari estates to the plaintiff till the debt was paid off. *Held* that the plaintiff had no ground of suit against the other defendants, as to whom there was misjoinder, except *R A*, the principal female defendant, as his cause of action against *R A* was based on the first bond, which did not create any charge upon the lands with which they are said to have meddled. *MAHOMED ZAHOR ALI KHAN v. RUTTA KOOR* 9 W. R., P. C., 9

[11 Moore's I. A., 468

3.

Suit on bond hypothecating immoveable property—Joinder of debtor and purchaser of property.—The holder of a bond hypothecating property who seeks to recover the debt due under the bond from his debtor, and to bring to sale the hypothecated property which is in the hands of a purchaser, is at liberty to implead the debtor and the purchaser in the same suit, and there is no objection to such an action on the ground of misjoinder. *BHOGI LAL v. CHUTTER SINGH*

[6 N. W., 323

distinguishing *MAKUND RAM DEBI DAS*

[6 N. W., 324 note

4.

Suit on bond.—The plaintiff alleged in his plaint that *R* had agreed in a bond to borrow from him Rs. 5,000 in order to institute a suit against *D* as to his share in certain joint ancestral property; that *R* consequently borrowed Rs. 3,000 from him, and that, while the suit was pending, *R* and *D*, in collusion with each other and their mother, in order to deprive the plaintiff of his money, agreed to refer the suit to their mother, who, by reason of their collusion, made a statement which resulted in a smaller sum being decreed to *R* than was claimed by him, and in the property in suit remaining in the possession of *D*; and that, as both *R* and *D* had taken collusive proceedings, with intent to obstruct the plaintiff's realization of his money, they were both liable for the said sum of Rs. 3,000, and he therefore brought this suit to recover Rs. 3,000 principal, and Rs. 3,000, an equivalent of that sum, under the terms of the bond; and that the cause of action arose on the day on which *R* and *D* agreed to refer their suit to their mother. *Held* (PEARSON, J., dissenting) that the suit was bad for misjoinder of parties. *BISHESHUR PERSHAD v. RAM CHURUN* 5 N. W., 25

5.

Non-registration as tenants.—Where a single suit for rent against the holders of several tenures is objected to on the ground of misjoinder, the mere fact of non-registration as separate holdings is no answer to the objection. The Court should inquire whether the tenants have not in

MISJOINDER—continued

temple from a date not later than 1827, in which year they were so described in the pamaish accounts. In 1830, they executed a muchalka to the Collector, who then managed the temple, whereby they agreed among other things to pay certain dues. They were described in the muchalka as paracudis. In 1857 the plaintiff's predecessors took over the management of the temple from, and executed a muchalka to the

SAMBANDHA PANDARA SANNADHI

(I L R, 11 Mad, 77

22. — — — — — Joinder of plain-

ram, and the other plaintiffs to the Kuduvaram—*Held* that a suit brought by the plaintiffs jointly was not bad for misjoinder. **MUTHUVIJAYA RAGHUNADHA RAJU TRIVAR : CHOCKALINGAM CHETTI**

(I L R, 19 Mad, 335

23 — — — — — *Mad Reg V of 1894, s 8—Suit by ward of the Court of Wards—Civil Procedure Code, 1882, s 464—*The holder of an impartible zamindari, governed by the law of primogeniture, having a son, executed a mining lease of part of the zamindari for a period of twenty years, by which no benefit was to accrue to the grantor unless mining operations were carried on with success, and the commencement of mining operations was left optional with the lessee. On the death

SAMI AYIAR and WILKINSON, JJ (affirming the judgment of PARKER, J) that the interests of the first and second plaintiffs not being inconsistent with each other, the suit was not bad for misjoinder. **BERESFORD v. RAMASUBBA** I L R, 13 Mad, 197

I, and J, was a regular of first in lants appealed. The lower Appellate Court was of opinion that the interests of the two plaintiffs were antagou-

MISJOINDER—concluded

tic, and following the decision in *Lingammal v. Chinna*, I L R, 6 Mad, 239, held that the suit was bad for misjoinder of parties. The case was thereupon remanded for an amendment of the plaint. On appeal to the High Court,—*Held* reversing the remand order that, the objection for misjoinder as co-plaintiffs not having been taken by the defendant in the Court of first instance, the Appellate Court ought not, under s 34 of the Code of Civil Procedure (Act XIV of 1882), to have allowed the objection. *Held* also that, as plaintiff No 2 admitted the adoption of plaintiff No 1, their claims were in no way antagonistic. They were both jointly interested in disproving defendant's title. They could therefore sue jointly under s 26 of the Code of Civil Procedure. *Lingammal v. Chinna*, I L R, 6 Mad, 239, distinguished. **FAKIRAPPA v. RUDRAPA**

(I L R, 16 Bom, 119

25. — — — — — *Civil Procedure Code (1882) s 26—Joinder of plaintiffs—Persons jointly interested in a suit—Claims not antagonistic—Cause of action, Meaning of—Parties—*The plaintiffs I to 4 were the daughter and daughter's sons of one G. They alleged that G died, leaving an infant son X, an infant daughter H and a widow C, that the son died leaving C as heir, and that, upon C's death, the sons of H became entitled to the property of X, but that, should it appear that G did not leave X as his heir, H would succeed to the

share from the representatives of P brother of G.

plaintiffs Nos 2, 3, and 4. On the objection of the defendant under s 26 of the Code of Civil Procedure, that the suit was not maintainable for misjoinder of plaintiffs,—*Held* that the expression "cause of action" occurring in s 26 of the Code is used, not in its comprehensive but in its limited sense so as to include the facts constituting the infringement of the right, but not necessarily also those constituting the right itself, so that the qualification implied in the words "in respect of the same cause of action" will be satisfied if the facts which constitute the infringement of right of the several plaintiffs are the same though the facts constituting the rights upon which they base their claim to that relief in the alternative may not be the same, and that, as the plaintiffs in the case complained of the same wrongful act of the defendant constituting the in-

fringement of the Code, and was not bad for misjoinder of plaintiffs. *Lingammal v. Chinna* *Pekalammal*, I L R, 6 Mad, 219, *Neeruranis Merumani Panigay v. Gorton*, I L R, 6 Bom, 468, dissenting from *Fakirappa v. Rudrapa*, I L R, 16 Bom, 119, followed. **HAARAMONI DASSEN v. HARI CHAND CHOWDHURY** I L R, 23 Calc, 833

MISJOINDER—continued.

interest in the subject-matter of the suit. The Court, allowing the plea of misjoinder, which both the lower Courts had overruled, remanded the case to the Court of first instance, in order that the plaint might be returned to the plaintiff for amendment, and the suit tried and decided afresh after amendment. **GOLAM v. WAJIDA BINT**

[7 N. W., 188]

18.

Suit for redemption of mortgage—Civil Procedure Code, 1859, s. 8—Parties.—K was in possession of mouzah Dharmapore as usufructuary mortgagee. A share in the mouzah was sld in the execution of a decree against the shareholder. It was afterwards transferred by private sale to S by the auction-purchaser, S, alleging that the mortgage-debt had been satisfied out of the usufruct, sued to recover possession of the share, and impleaded not only K, but also the heirs of the mortgagors, and his vendee, the auction-purchaser, but no cause of action was declared against those parties, nor did they resist the suit. The lower Courts dismissed the suit on the ground that separate causes of action, not between the same parties, had been included in one suit. The High Court reversed the decrees of the lower Courts so far as they dismissed the suit against the heirs of the mortgagors and the mortgagee, and remanded the suit for trial, as since the heirs of the mortgagors were interested in the account which must have been taken in the suit, it was necessary to make them parties in order that they might be bound by it. **SUKHAWAT ALI v. KESHO TEWARI**. 8 N. W., 203

17.

Specific performance.

Suit for—Joinder of third person not party to the contract.—In a suit for specific performance of a contract entered into by defendant No. 1, the plaintiff joined as a defendant a third person who alleged that he was the owner of the property, the subject of the contract, seeking to obtain possession and other relief as against such third person stating that he was a benamidar of the first defendant. There was nothing to show that such third person had any interest distinct from the first defendant. *Held* that there was no misjoinder. The principle laid down in the cases of *Houghton v. Money*, L. R., 2 Ch. App., 166, and *Luchumsey Ookerda v. Fazulla Cassumbhoy*, I. L. R., 5 Bom., 177, viz., that a person not a party to the contract cannot be joined in a suit for specific performance, is only applicable where from the plaintiff's case it appears that the third party, not a party to the contract, has a distinct interest from that of the other parties to the contract, which interest is sought to be declared null and void. **MOZUND LALL v. CHOTAY LALL**

[I. L. R., 10 Cal., 1081]

18.

Civil Procedure

Code, s. 26—Amendment of plaint—Specific Relief Act, s. 42—Declaratory suit—Suit by six plaintiffs praying for a declaration that certain proceedings of a District Temple Committee removing them from office as trustees of a temple were illegal. Defendants pleaded that the suit would not lie because of misjoinder. *Held* that, under s. 26 of the Code of Civil Procedure, the plaintiffs could not sue jointly,

MISJOINDER—continued.

and that the plaint should be returned for amendment, one of the plaintiffs to be allowed to use it as his own. **RAMANUJA v. DEVANYAKA**

[I. L. R., 8 Mad., 361]

19.

Plea of misjoinder, when sustainable—Suit against several persons claiming under different titles, Effect of—Civil Procedure Code, ss. 31 and 53.

—A, as auction-purchaser at a revenue sale, brought a suit against a number of persons for possession of some chur land. The defendants claimed portions of the land under different titles and pleaded misjoinder. The Court, upon the Ameen's report, gave A the option to amend the plaint by withdrawing the suit against any particular sets of defendants. A elected to go to trial on the suit as brought. *Held* that, under the circumstances, it was necessary for the Court to adjudicate on the question of misjoinder. *Held* also that the plaintiff was not entitled to join in one suit all the persons, on the ground that they obstructed his possession, unless he was able to show that those persons acted in concert or under some common title. *Held* further that, having regard to the provisions of ss. 31 and 53 of the Civil Procedure Code, the proper order of the Court should have been to reject the plaint and not dismiss the suit on the ground of misjoinder. **SUDHENDU MONUN ROY v. DURGADAASI**. I. L. R., 14 Cal., 435

20.

Civil Procedure

Code, s. 44, Rule (b).—An objection to the attachment and sale of certain immovable property, raised by one who claimed to have purchased the same at a sale in execution of a prior decree, was disallowed on the ground that under the prior decree the rights of the ground that under the prior decree the rights of one only of the present judgment-debtors had been sold and purchased by the objector. In accordance with this order, two-thirds of the property under attachment were sold; and the objector thereupon brought a regular suit for a declaration of his right as a purchaser of the whole property in execution of the prior decree. To this suit he impleaded as defendants the decree-holder and the judgment-debtors. The suit was decreed, and in the result the decree-holder alone was compelled to pay the whole of the costs. Subsequently he brought a suit for contribution in respect of these costs, making defendants to the suit (i) R, one of his co-defendants in the previous suit, personally and as heir of A, who was another suit, being sued in the character of heirs of A. *Held*, with reference to a plea of misjoinder within the terms of rule (b) of s. 44 of the Civil Procedure Code, that, even if there were misjoinder of parties, the first Court, having proceeded to trial of the suit, and not having rejected the plaint or returned it for amendment, or amended it, should have disposed of it upon the merits, and found what A's share in the amount paid by the plaintiff was, and whether assets to that amount had come to the hands of the defendants as his heirs. **KISHNA RAM v. RAKMINI SEWAK SINGH**. I. L. R., 9 All., 221

Form of suit.

21. The defendants' ancestors or predecessors in title were the cultivating tenants of the lands of a certain

MONEY HAD AND RECEIVED

—concluded.

6. Money paid as price of goods,

Suit to recover—*Consideration, Failure of*—Money paid as price of goods to be delivered hereafter is money received for the use of the seller, and it is only upon failure of consideration that the money so paid becomes money received for the use of the buyer. *ATUL KRISHN BOSH v. LIXON & Co.* [I. L. R., 14 Cal., 457]

MONEY LENT.

See HINDU LAW—CONTRACT—MONEY LENT. 5 B. L. R., 396

[7 B. L. R., 489]

See LIMITATION ACT, ART. 60.

I. L. R., 18 Cal., 25

I. L. R., 18 Bom., 352, 775

Suit for—

See RIGHT OF SUIT—MONEY LENT.

[I. L. R., 23 Cal., 851]

MONEY PAID.

See CASES UNDER LIMITATION ACT, 1877.

ART. 61.

by mistake.

See CASES UNDER CONTRACT ACT, s. 72.

by trespasser in possession.

See WRONGFUL POSSESSION.

[I. L. R., 4 Cal., 566]

in excess satisfaction of decree.

See CIVIL PROCEDURE CODE, 1882, s. 244

—QUESTIONS IN EXECUTION OF DECREE.

[I. L. R., 1 ALI, 388

6 Mad., 304

17 W. R., 14

15 W. R., 160

19 W. R., 413

4 C. L. R., 577

I. L. R., 23 ALI, 79

recovery—

See CASES UNDER CIVIL PROCEDURE CODE,

1882, s. 244—QUESTIONS IN EXECUTION

OR DECREE.

See CASES UNDER CIVIL PROCEDURE CODE,

1882, ss. 257, 258.

to prevent sale.

See RIGHT OF SUIT—SALE FOR ARREARS

OF REVENUE. I. L. R., 13 ALI, 195

See CASES UNDER SALE FOR ARREARS OR

RENT—DEPOSIT TO STAY SALE.

REVENUE—DEPOSIT TO STAY SALE.

MONEY PAID—concluded.

1. Voluntary payment—Comput-

sory payment of revenue—*Arrears request*—*L.* having been compelled by a revenue officer to pay revenue payable by *P*, sued *P* to recover the amount as having been paid in his account. His plaint disclosed no cause of action against *P*, though in a Civil Court, for he did not plead that the payment was made at the request, expressed or implied, of *P*. There being no such request on the part of *P* to support the action, it was held that *L* could not recover. *PATIL LAL v. LICHMAN PARNHAD* 7 N. W., 155

MONEY PAID—concluded.

2. Penal assessment of revenue paid under protest—*Proof of illegal coercion*—In order to enable one having paid money under protest to recover money so paid, it is necessary for him to show that the payment was made under illegal coercion. *ALUTHAYYA CHETTI v. SECRETARY OF STATE FOR INDIA*

[I. L. R., 22 Mad., 100]

3. Payment to stay

sale.—Plaintiff's ancestor had purchased in execution the right title, and interest of *A*, one of the defendants. Antecedently to that sale the right title, and interest of *A*, and those of two others, had been attached to the right title, and a sale having been ordered after purchase by plaintiff's ancestor, the latter, whose objections did not avail, finally prevented the sale by paying in the amount due. Held that, as *A* was not legally bound to pay the amount due under the decree against *D*, and the payment was in every sense voluntary, plaintiff could not recover from her and the sons of *D*. *Collector of CHANABAD v. RAM BUDH SINGH*

10 W. R., 400

4. Money paid to

protect property afterwards shown to have been wrongfully attached in execution of decree.—Where the plaintiff was obliged to bring a suit and carry it up to the Appellate Court to have his title declared to be his own property which the defendant had seized and attempted to sell in execution of a decree against another person, the defendant was held to have no right either in law or equity to retain money which the plaintiff had been compelled to pay him to save the property from sale. *PUTTICE CHANDER HANERAY v. GOLAM ALI CHOWDHURY*

10 W. R., 453

MONEY PAID FOR BENEFIT OF

ANOTHER.

See VOLUNTARY PAYMENT.

[I. L. R., 22 Cal., 28

Payment of revenue by the

claimant of an estate while temporarily holding it under a decree in his favour, afterwards reversed.—*Liability of owner for money so paid for his benefit*—Where a claimant, having obtained possession of an estate under a decree in good faith, has paid the revenue and cesses (in default of which payment the estate would have been sold), although the decree may have been reversed afterwards, and he may have been deprived of possession, he nevertheless is entitled to be repaid the

MONEY HAD AND RECEIVED

—continued—
See Limitation Act, 1877, art 120
[I. R., 18 Mad., 383
I. R., 18 All., 430

See Cases under Small Causes Court, Money, &c.—MONEY HAD AND RECEIVED

1. — Money paid under compul-

sion of law.—Payment into Court by mortgagees of amount of decree to prevent sale of mortgaged prop-

erty.—Voluntary payment.—The defendant sued

for possession of the steamer as mortgagees from

J. H. P., in order to obtain its release and the

amount of the decree against J. H. P. into Court,

and the steamer was given up. Subsequently an

order was made by the Court on the application of

the plaintiff, that the money should remain in Court

pending the result of a suit to be brought by them

for the recovery. They accordingly brought a suit

against the defendant. The Judge of the Small

Cause Court found that J. H. P. had no attachable

interest in the steamer and that the plaintiff had

ough the

amount of

[8 B. L. R., 418

2. — Money paid under

compulsion of law cannot be recovered back as money

had and received. JAGGANNATH GOUD v. CHOW-

DARY MURRAY Possessory

Voluntary payment.—If A without B's author-

ity pay B a creditor, he cannot recover back from the

creditor the amount so paid. MOOR CHOWD v. AGO-

DARY PERSHAD
3 N. W., 189

4. — Suit by sub-lessee

against lessor for making which he was com-

MORTGAGE COURTS, POWER OF—

Mortgage Courts have no power to

make orders in person against persons not parties

to the High Court. KAMRATH KOOND v. ODOO-

DINATH KHAH
18 B. L. R., Ap., 37

S C BAN MITHUR KOOND v. AGODHVA KAH
20 W. R., 128

MONUMENT

See Cases under Hindu Law—BYDOW

MENT

See Hindu Law—INHERITANCE—HIL-

See Hindu Law—INHERITANCE—HIL-

See Hindu Law—INHERITANCE—HIL-

[I. R., 6 Bom., 682

See Hindu Law—INHERITANCE—HIL-

[I. R., 6 Bom., 682

See Hindu Law—INHERITANCE—HIL-

[I. R., 6 Bom., 682

See Hindu Law—INHERITANCE—HIL-

[I. R., 6 Bom., 682

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[I. R., 6 Bom., 682

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[I. R., 6 Bom., 682

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[I. R., 6 Bom., 682

See Hindu Law—INHERITANCE—HIL-

[I. R., 6 Bom., 682

See Hindu Law—INHERITANCE—HIL-

[I. R., 6 Bom., 682

See Hindu Law—INHERITANCE—HIL-

[I. R., 6 Bom., 682

See Hindu Law—INHERITANCE—HIL-

[I. R., 6 Bom., 682

DECRETE—concluded.

decree a second appeal, which was successful, On an application by the first defendant for refund of the money paid by him as stated above,—*Heid* claimed. *KASSIR SAID v. LUIS* [L. R., 17 Wnd., 82]

out of his own money. K having recovered the
debt, A sued her to recover the money paid by him
in satisfaction of the decree. Held that A was
entitled to recover. KANKARAJA v. VENKATRAM-
MAJI. I. L. R., 7 Mad., 586

out of his own money. K having recovered the
debt, A sued her to recover the money paid by him
in satisfaction of the decree. Held that A was
entitled to recover. KANKARAJA v. VENKATRAM-
MAJI. I. L. R., 7 Mad., 586

Under the provisions of the Civil Procedure Code (Act XIV of 1882), under which it could be made, the proper course was to have taken steps under s. 278 of the Code to have the attachment on the property raised. By paying the amount of the decree into Court it became necessary to file a writ for the recovery of the money so paid. VARADAT
MOTILALD v. KACHIA GABARD KHUSHAL
[T. L. R., 22 Bom., 473]

Under the provisions of the Civil Procedure Code (Act XIV of 1882), under which it could be made, the proper course was to have taken steps under s. 278 of the Code to have the attachment on the property raised. By paying the amount of the decree into Court it became necessary to file a writ for the recovery of the money so paid. VARADAT
MOTILALD v. KACHIA GABARD KHUSHAL
[T. L. R., 22 Bom., 473]

—continued.

5. Decree subsequently found to be barred—Suit to recover money paid to be barred—Sale under decree afterwards held to be barred—Jurisdiction of Civil Court.—Applicant having been made to a Deputy Collector to execute a decree for rent, the judgment-debtor, in order to save his tenure from sale, brought the money

6. —Decree passed ultra vires and subsequently reversed—*Suit for money paid under it*—The assignee of a decree having obtained execution of it in the Deputy Collector's Court under cover of a declaratory and mandatory

6. —Decree passed ultra vires and subsequently reversed—*Suit for money paid under it*—The assignee of a decree having obtained execution of it in the Deputy Collector's Court under cover of a declaratory and mandatory

7. _____ Decree afterwards reversed — *Suit to recover money paid under it.* — Money realized in execution of a decree may be recovered by suit, if the decree is set aside because the party seeking to recover. If such party was not a party to the original decree and his name appeared there owing only to misrepresentation, he is not restricted to the Court executing the decree, but is at liberty to seek his remedy in a separate suit. *SHERRO COMARRE*

7. _____ Decree afterwards reversed — *Suit to recover money paid under it.* — Money realized in execution of a decree may be recovered by suit, if the decree is set aside because the party seeking to recover. If such party was not a party to the original decree and his name appeared there owing only to misrepresentation, he is not restricted to the Court executing the decree, but is at liberty to seek his remedy in a separate suit. *SHERRO COMARRE*

MONEY PAID UNDER PROCESS OF

MORTGAGE—continued.

See CASES UNDER JURISDICTION—SUITS FOR LAND—REDEMPTION.

See CASES UNDER LIMITATION ACT, 1877, ARTS. 134, 135, AND 147.

See MAHOMEDAN LAW—MORTGAGE.

[I. T. R., 20 Bom., 116]

See MAHOMEDAN LAW—PRE-EMPTION—RIGHT OF PRE-EMPTION—MORTGAGES.

[B. L. R., Sup. Vol., 166

6 B. L. R., Ap., 114

11 W. R., 282

See MALABAR LAW—MORTGAGE.

See CASES UNDER ONS OF PROOF—MORTGAGE.

See CASES UNDER PARTIES—PARTIES TO SUITS—MORTGAGES, SUITS CONCERNING.

See CASES UNDER REGISTRATION ACT, 1877,

s. 50.

See STAMP ACT, 1869, s. 3.

[I. T. R., 2 Cal., 58

See STAMP ACT, 1879, s. 3, cl. 4 (b).

[I. T. R., 9 All., 585

See STAMP ACT, 1879, s. 3, cl. 13.

[I. T. R., 11 Mad., 39

I. T. R., 21 Mad., 358

I. R., 27 Cal., 587

4 C. W. N., 524

See CASES UNDER STAMP ACT, 1879, SCH. I,

ART. 44.

See CASES UNDER TRANSFER OF PROPERTY

ACT, s. 2.

See CASES UNDER TRANSFER OF PROPERTY

ACT, s. 135.

See CASES UNDER VENDOR AND PURCHASER

—PURCHASE OF MORTGAGED PROPERTY.

—by member of joint Hindu fa-

See CASES UNDER HINDU LAW—ALIENATION

—ALIENATION BY FATHER.

See CASES UNDER HINDU LAW—JOINT

FAMILY—POWERS OF ALIENATION BY

MEMBERS.

Property sold subject to —

See CASES UNDER SALE IN EXECUTION OF

DECREE—DISTRIBUTION OF SALE-PRO-

CEEDS.

See CASES UNDER SALE IN EXECUTION OF

DECREE—MORTGAGED PROPERTY.

Property subject to —

See COURT FEES ACT, SCH. I, ART. 11.

[I. T. R., 1 Bom., 118

6 N. W., 214

8 B. L. R., Ap., 43

MORTGAGE—continued.

Suit for sale on —

See CASES UNDER TRANSFER OF PRO-

PERTY ACT, s. 99.

—Usufructuary mortgage.

See TRANSFER OF PROPERTY ACT, ss. 67,

68.

See TRANSFER OF PROPERTY ACT, s. 99.

[I. T. R., 16 All., 415

I. T. R., 17 All., 520

I. T. R., 26 Cal., 164

3 C. W. N., 290

See TRANSFER OF PROPERTY ACT, s. 135.

[I. T. R., 16 All., 315

14 W. R., 461

2. Proof of actual pledge and

ownership of property by pledgee.—Decree

on mortgage bond pledging land.—The contract of

hypothecation defined. A creditor suing under such

a contract must prove that there was an actual pledge,

and that the land was part of the debtor's estate at

the time of pledge. The decree will then be for sale

of the property hypothecated, unless the debtor pay

the amount due with interest within a period to be

fixed by the Court. CHEITTI GAVDAN v. SUNDARAM

PILLAI

2 Mad., 51

3. Immoveable property made

security for loan without power of sale.—

Remedy of creditor who has a right to realize charge

not amounting to a mortgage.—Enclosure.—Where

immoveable property is made by act of parties secu-

rity for the payment of a debt, but no power of sale,

without the intervention of a Court, is given to the

creditor, there is no transfer to him of an interest in

his favour, and the transaction does not amount to a

mortgage. When immoveable property has been so

made security for the payment of a debt, there can be

no foreclosure by the creditor, unless the terms of

the contract admit of it. KIRKALI BHAGYANDAS v.

RAYA

I. T. R., 10 Bom., 519

4. Mortgage without change

of possession.—Parol mortgages of chattels.—A

mortgage may be supported if proved to have been made

bona fide, although the property mortgaged may have

been left in the possession of the mortgagor. Mort-

gages of chattels may be made by parol. SHAM

SOONDER v. CHETIA

3 N. W., 71

5. Advance to save property

from sale.—Lien.—A person who advances mone-

to another for the purpose of saving a moiety of t-

latter from sale for arrears of rent has no lien on the

property for the money advanced. Duff Tha v.

Pearce Kunt, 18 W. L., 404, and Mayet Hossain

v.

MONEY PAYABLE ON DEMAND.

See HINDU LAW—CONTRACT—MONEY
Lent
5 B I. R., 388
[7 B I. R., 489
See Cases UNDER LIMITATION ACT, 1877,
ART 73

MONEX, SUIT FOR

See LIMITATION ACT, 1877, ART 113
[I. L. R., 18 AN, 3
See RES JUDICATA—CAUSES OF ACTION
[I. L. R., 3 CALE, 23
See RES JUDICATA—MATTERS IN ISSUE
[I. L. R., 20 MAD, 418
See VALUATION OF SUI—SCOT
[I. L. R., 13 BOM, 675
I. L. R., 18 BOM, 698

MOOKTEAR

See Cases UNDER PRADHAN
OF AGENTS
14 W. R., 38
130 W. R., 119
13 B. I. R., 177
I. L. R., 7 CALE, 245

and client

See PARTIAL AND COMMUNICATION
I. L. R., A. C. 8
I. L. R., 25 CALE, 738
2 C. W. N., 484

Dismissal of—

See LEGAL PRACTITIONERS ACT, 1877, ART 40
I. L. R., 15 CALE, 152
I. L. R., 14 I. A., 154

Functions of—

See LEGAL PRACTITIONERS ACT, 1877, ART 167—JOINT DECEASES—JOINT DE
I. L. R., 14 CALE, 558
Giving commission to—
See PRADHAN—REMOVAL—SUSPENSION
AND DISMISSAL
11 B. I. R., 312
Power of, to present application
for execution of decree.

See LIMITATION ACT, 1877, ART 173 (1871,
ART 167)—JOINT DECEASES—JOINT DE
CASES HOLDERS I. L. R., 4 CALE, 605
Admission of mooktears—
Power of High Court—The High Court would not
interfere with Zillah Judges in the selection and
admission of mooktears under the 39th section of
the Pindaris Rules 1866 in the matter of
THE ESTATE OF MANOHAR HOSSAIN
16 W. R., MIA, 49
Rule 39 of Rules
of High Court—The 39th of the Rules for mook-
tears, issued by the Court in 1866 only required that
every person who had been practising as a mooktear
in the Criminal Courts should be at liberty to submit

MOOKTEAR—continued

the Judge that he was a person of good moral
character and qualified by his knowledge of law and
procedure, before he could be entitled to admission
under that rule. But it was not the intention of the
Court that parties should be subjected to regular
examinations or that the duty imposed upon the
Judge should be delegated to the Magistrate. In
re GORUCK CHANDAN KUN 6 W. R., MIA, 29
Grant of certificate—There was no limitation of time
for the grant of a certificate by a Judge under Rule
39 of the Rules made by the Court in 1866 for the
admission of mooktears. In re JORAIN
[6 W. R., MIA, 120
Application for leave to
practise in Court in another district—

4. Appearance of mooktear—
CURRY HANMANN
18 W. R., 285
Right to appear—Criminal Procedure Code (Act
of 1892)
See IX re SUBBA AITIA I. L. R., 1 MAD, 504
Code, 1892 s. 37—Rule 16 of Rules of High Court,
Calcutta—Court Fees Act (VII of 1870), s. 11,
art. 10—A mooktear holding a certificate to act
bearing an eight anna stamp as required to act
in a case may perform any act which a mooktear
may do in the course of a case. CHANDAN DEB
+ MOHIT CHANDAN HASTO—I. L. R., 10 W. R., 11
7. Acting as mooktear—An
X of 1865 s. 13—The word mooktear is not
a valid for his capacity as a mooktear for the
purpose of the said section. The word mooktear is
not qualified by the word mooktear as a mooktear and
of 1865. The word mooktear is not qualified by the
no jurisdiction in such a matter. In re JORAIN
MOKTEAR DEBATA s. 13—The word mooktear is not
8. In re JORAIN—MOKTEAR DEBATA s. 13—The word mooktear is not

lines of Buckenrange of the truth of his representa-
tions the High Court declined to interfere, thinking
the refusal reasonable but observed that as the
right to appear—Criminal Procedure Code (Act
of 1892)
See IX re SUBBA AITIA I. L. R., 1 MAD, 504
Code, 1892 s. 37—Rule 16 of Rules of High Court,
Calcutta—Court Fees Act (VII of 1870), s. 11,
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MOKTEAR DEBATA s. 13—The word mooktear is not
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1. FORM OF MORTGAGES—continued.

and redempt in the morning

[I. L. R., 2 All. 527]

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20.

profits of the mouzah, according to the terms of the first bond, and that the mouzah should remain in the

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pay from our own pocket; that we promise to pay the aforesaid sum to the mortgagees within two

15.

101 W. N. 7. 101

15.

(S B. L. R., Apr., 14

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12 N. W. 203

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1. I. L. R., 8 All., 486

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pay from our own pocket; that we promise to pay the aforesaid sum to the mortgagees within two

MORTGAGE—continued**1 FORM OF MORTGAGES—continued**

Court refused, in view of its decision in *Chunni v. Thakur Das*, 1 L R, 1 All, 126 to interfere with the decree of the lower Court giving B such a declaration. *MUL CHAND v. BALGOBIND*

[1 L R, 1 All, 610]

37 ———— *Covenant not to alienate*—An agreement recited that A had executed a bond in favour of B in which it was declared I promise to re pay the whole principal, with interest in the month of Phalgun 1271 P^o, and till payment of the amount I will not transfer any property

not operate as a mortgage by A. *GUNOO SINGH v. LATAYUT HOSSAIN*

[1 L R, 3 Calc, 336. 1 C L R, 81]

38 ———— *Covenant not to*

[1 L R, 7 All, 258]

by the bond was paid." The bond was recorded

and that the fact that the bond had been recorded in book four" showed that it was not the intention of the parties that the immovable property of the debtor should be charged. *NAJIBULLA MULLA v. NUSIR MISHRA*

1 L R, 7 Calc., 196
[8 C L R, 454]

See also *DOSS MONEY DOSSER v. JOMMENJOR MULLICK* 1 L R, 3 Calc., 303 1 C L R, 443

40 ———— Usufructuary mortgage

Constructive
whether
an usufru
the Jul.

instrument before him and ascertain from it what kind of transaction the parties had in view when

MORTGAGE—continued**1 FORM OF MORTGAGES—continued**

they entered into it. In the case of an usufructuary mortgage, where no term is specified the mortgagor is entitled to re-enter on the property when on taking an account, he is able to show that the principal and interest have been satisfied. *LALA DOUL NARAIN v. RUNJIT SINGH*

1 C L R, 256

41. ———— *Advance on zur-peshgi lease*—A lease was granted on a zur peshgi advance for seven years at an annual jumma of Rs 14 4 from which a deduction of Rs 11 15 was to be made on account of interest, and it was also stipulated that if after the expiration of the lease, the loan was not repaid the lease should continue. Held that under the circumstances as stated above, the transaction between the parties was a mortgage. *KISHTO COOMER SINGH v. CHOWDREE BEHAR SINGH*

2 May, 189

42 ———— *Advance of money with possession of land till advance is repaid.*—Where a sum of money is advanced and the person making the advance is put in receipt of the rents and profits of land by way of payment of interests on the loan, this is not a mere license or permission to the lender of the money to receive the rents, revocable at the will of the borrower but is in the nature of a mortgage transaction. *KHOOSHAL RAO v. JAYKEER DOSS*

2 N W, 8

43 ———— *Transfer of Property Act (IV of 1882) ss 58 (1), 59—Usufructuary mortgage—Anomalous mortgage*—A deed of mortgage executed in 1879 for a consideration of Rs 300 provided that the term of the mortgage should be four years certain; that certain interest should be payable, that the mortgagee should have possession, that the profits should be appropriated first in lieu of yearly interest and any balance appropriated in payment of the principal debt; and that the mortgagor should be entitled to redeem if the principal and interest were paid at the expiration of the four years. The mortgagee never obtained possession; and in 1882 he brought a suit against the mortgagor to recover the unpaid interest then due and obtained a decree, which was satisfied by the sale of property belonging to the judgment-debtor. In 1886 he brought another suit for recovery of the principal together with the residue of interest up to the date of suit. Held that inasmuch as there was no stipulation in terms that the mortgagee was to remain in possession until payment of the mortgage-money, the instrument did not strictly fall within s 58 (d) of the Transfer of Property Act (IV of 1882), i.e., as a usufructuary mortgage, and that the rights and liabilities of the parties must be determined in accordance with the principles enunciated in s 58 (f) of that Act, i.e., as an anomalous mortgage. Held, upon the construction of the instrument that it must be regarded as a usufructuary mortgage not only during the four years, but after their expiration. *HIKMATULLA KHAN v. IMAM ALI*

1 L R, 13 All, 203

44. ———— *Anomalous mortgage—Right to possession—Transfer of Property*

MORTGAGE—cont. nued

1. FORM OF MORTGAGES—continued

a certa p rod and pro dng that n case of de
fault: i such paym at w th n such p rod all the core
nant f r such eyance should become null -- held
that the transact on was a sale a d not a mortgag e
and that cons quently the grant r had no right to
rele in the hands af r the exp rat on of tie p rod so

the sale of the lands nor any stipulation that the

document or that subsequently to that time a y
advances were made by the grantee to the grantor
on the security of the lands nor any other
document which pointed to a right on the part of the
grantee to recover from the grantor the sum of
Rs 200 or a part of it before or after the period
named for the repurchase. The law as laid down in
Ramsay v. C. nro 1 B n 199 is once again
always a mortgage is still in force their decision
of Bombay High Court regarding mortgages containing
clauses of coud to al sale wh ther executed before
or after 1858 The ancient law and usage of the
country respect to the law of mortgages and
generally the sale of immovable property
discussed HAPUJI AFARI v. BHAVARAJI BHARDA
II L R 2 Bom 231

61. *Le lor and pur*
chaser—Sale—Held that a agree me n t b y the pur
chaser of certa n mo e cable property that sho ld
o yment by the e dor of certa n s m w th n a
spe t d e ber st rel to the ve dor a d w t a
ofa lure of such p yn t t sh d be on e the abso ute
property f the pu chas r d t e te the relat o
of mortgagor and mo t u e i t w n the p t s
a d that up o the do n fa lure to co p y w th
the t rms of the ac r n t the p r o t y v e st e d
in the purchas r BUT HAN C I HANMAD
BEGAM I L R O ALL 37

62 Sale of perpe
tual lease. A conditional agreement to sell back
to send r not a nounting to a rjage. Resert t o
of r ght to re purchase. R ght to redeen. A ju
chaser of land a o h r p r a n a d a n e the jur
el as man y for him p r a t e d to the l a t t r a o k u
r a n p o r t a l o r j r t u a l l a c i t a s a n e r k y f o r t l e
d b t h a s a n a d t o a c q u i t t a c e o f t. A t t h e
s a n e t i n a k a r a m s w a s x c o l l h r b y t
w a s a p l a t e d a t h n t h e g r a n t o r o l a l
s h o u l d p a y t o t h e p r a t e e o h s l e a t t e a m o u t o f
t h e a l o e a d b t w i t h o u t l e a t o u t o f h s r t h
o w n m o e y s w i t h o u t l o r n f r o m a n y o f r p e
a n t h e t t e p i t a l s h o u l d l e a c c l l t h e g r a n t o r
h a s t o c l a n t o m e e p r o n t s d u n t h e p o s
s o n o f t h o r c a r l i a r H e l l t h a t w t h r e g a r d t o
t h e t r m s o f t h e i n s t r u m e n t s a n d t h e r e c u r r e n c e s
u n d e r w h c h t h e y w e r e m a d e t h i s t r a n s a c t i o n w a s
n o t a n o t r a c t o f m o r t g a g e b u t e v e n d r o e o f a s a l e a n d
a c q u i t t a n c e o f a d b t w i t h p o w e r r e s e r v e d t o t h e

MORTGAGE—cont. nued

1 FORM OF MORTGAGES—continued

vendor to re-purchase under certain conditions per
 sonal to him. DIFFLERSHAD v LUNN LUNSHAD
 [L.L.R. 10 Calc 30 13 C.L.R. 382
 L.R. 10 L.A. 123

63 ————— *Lead and pur*

no provision as to trust a driver or power for
the purchaser to recover the purchase money. In
1888 a purchaser alleged that the transaction
evaded by the above document was a mortgage
brought about to defeat the plaintiff's
action did not constitute a mortgage and that the
plaintiff was not entitled to recover. *ARVAYAN*
RAHIMANSA I. R. 14 MAR. 170

84 — ale c th r ight reserved of re pur chase th n a jers d st u guished fro n mortgage — Construct n of t e u nts of sale and of agree ment for re sale A document pu rt ng to be one of sale though t accompan ed by a contract reser ving to the v dor a r ight to re-purchase t e property sold on r ay z the purchase in ey th e r t a n t n e s t o n that ne on t be co structed as f t were a mortgage Allerson v B e 21 e O d J 100 referred to and follow d the l w of Ind a and of E land be ng the same on th s po t B u a d v a n a r t e B u a d way Div I L R 12 All 387

[L R 17 I A 98

85 ----- Mortgage by conditional bill
of sale Joint property of Benjamin A. name of
cash for real estate of George A. name of
but the name of the same of the father of
A. After the father's death as in and to my
and by conditional bill of sale of the same as pro-
per and by his will the same as null and void
was a daughter of the father of Benjamin A. name of
separated from the father of the same as
bill of sale of the same as null and void of the same
and that the said name of the same as to be charged
the same. He it is that the grantor to be not
that he as null and void of the same as to be charged
the said name of the same as to be charged
of such bill of sale only but that portion of the same
for which the same as null and void of the same
charge on the same as null and void of the same
the said name of the same as to be charged
DINCH March, 1855

Marsh, 851

68 Change of name
in Government records-- subsequent agreement to
retransfer and in Government records on payment
of debt. In 1876 the plaintiff bought the land to the
defendant transferred certain land to the defendant
name in the Government records. In July 1879 the
defendant executed the following document to the

Change Form

MORTGAGE—continued.**1. FORM OF MORTGAGES—continued.**

alleging that they had been mortgaged to the defendant by their father under two documents. The defendant produced them and relied upon them as deeds of sale, which conveyed to him absolutely the lands mentioned in them. The form of the instruments was not conclusive, but it appeared *aliunde* by the conduct of the defendant himself that the deeds were intended as mere securities for money, and that he had treated them as such. Certain entries in the defendant's accounts also treated the respective considerations named in the deeds as continuing debts due to the defendant from the plaintiffs' father. The Subordinate Judge awarded the plaintiffs' claim, but his decree was reversed, on appeal, by the Assistant Judge, who held that the transaction was a sale, and not a mortgage. On appeal to the High Court,—*Held* that, under the circumstances mentioned above, a Court of Equity would regard the instruments as mere securities for money. **GOVINDA v. JESHA PREMAJI**. . . . **I. L. R., 7 Bom., 73**

57. — Sale since 1858

*—Construction of right of redemption.—Per curiam (INNES, J., dissenting).—*In the Madras Presidency, where contracts of mortgage by way of conditional sale have been entered into subsequent to the year 1858, redemption after the expiry of the term limited by the contract must be allowed as suggested in *Thumbusawmy Moodelly v. Hussain Rowthen, I. L. R., 1 Mad., 1*. *Per INNES, J.*—Contracts of mortgage and conditional sale must be construed in accordance with the intention of the parties, which can only be gathered from the terms of the instrument. It cannot be presumed that parties to mortgages by way of conditional sale executed since 1858 contracted with reference to the rule enforced by English Courts of Equity, adopted by the Sudder Court in 1858, and followed for thirteen years in this Presidency. **RAMASAMI SASTRIGAL v. SAMIAPPANAYAKAN**

[I. L. R., 4 Mad., 179]**See VENKATA SUBBAYA v. VENKAYYA****[I. L. R., 15 Mad., 230]****58. — Deed, Construction of—**

Bai-hil-wafa—Foreclosure in the Central Provinces.—By a bond, dated 10th February 1857, a certain village was mortgaged by one G to the appellants and their father as security for a loan; the bond providing that, "if I fail to pay the money as stipulated, I and my heirs shall, without objection, cause the settlement of the said village to be made with you." The interest of G in the village was described as that of a *malguzar*, and his proprietary right therein was declared by the revenue authorities shortly after the execution of the mortgage, but his payments of revenue being in arrear, the Board of Revenue granted a lease of the village for ten years to the appellants' father. The mortgagees in a suit on the bond obtained the following decree on 3rd November 186 : "As the defendant acknowledges the plaintiffs' claim, it is ordered that a decree be given to the plaintiffs for principal and interest and costs against the defendant and the mortgaged property." In proceedings in the Civil Court taken under this

MORTGAGE—continued.**1. FORM OF MORTGAGES—continued.**

decree, the mortgagees asked for possession of the village, and obtained, on 17th July 1862, an order, in pursuance of which they were put in possession, an appeal by G being rejected. G took various steps to obtain possession of the mortgaged property, or a declaration of his proprietary interest therein, but failed in his endeavours, an application for a grant of the proprietary right in the village, and an appeal from an order cancelling his *pottah*, being rejected by the revenue authorities on 8th December 1864 and 27th July 1865, respectively; and on 12th August 1867 G conveyed the village by deed of sale to the respondent. In a suit brought by them to redeem the mortgage and obtain possession of the property,—*Held* that the effect of the bond was to create a simple mortgage, and not a conditional deed of sale; and that the proceedings taken under the decree of 3rd November 1860, and the order made therein of 17th July 1862, by virtue of which the mortgagees obtained possession of the mortgaged property, did not operate so as to extinguish the right of redemption. The rule that a *bai-hil-wafa* does not become absolute upon breach of the condition as to payment, without proceedings for foreclosure, obtains in the Central Provinces of India. **GOKUL DOSS v. KRIPARAM**. **13 B. L. R., P. C., 205**

59. — Deed of sale convertible into a mortgage—Construction of deed.

Where a deed, which on the face of it was described as a mortgage, stated that the grantee was already in possession under a previous mortgage by the grantor and was under the second deed to receive the profits in liquidation of interest so far as they would go, and that the grantor was not to be liable to repay the principal money or such balance of interest (if any) as might accrue upon it, unless he adopted a son, and the grantee, unless that event happened, was to enjoy the property conveyed in right of purchase for the sum (principal and interest) due to him,—*Held* that the deed was a sale liable to be converted into a mortgage, and not a mortgage liable to be converted into a sale. *Howard v. Harris, 1 Ver., 190; Ramji v. Chintu, 1 Bom., 199; Shankubhai v. Kassibhai, 9 Bom., 69*, referred to and distinguished. **SUBHADHAT v. VASUDEVBHAT**. **I. L. R., 2 Bom., 113**

60. — Deed of sale convertible into a mortgage—Construction of deed

—Redemption, Right of—Alienation of immovable property.—Where the grantor executed to the grantee a document reciting a mortgage by the former to the latter of certain lands for Rs 125, on which Rs 200 were then due from the grantor to the grantee, and containing an agreement that the grantee should pay Rs 75 to another creditor of the grantor, and purporting, in consideration of Rs 275 so made up, absolutely to sell and convey the mortgaged lands to the grantee, and the grantor executed to the grantor a document of the same date reciting the sale of the mortgaged lands by the grantor to the grantee for the consideration of Rs 275, and covenanting that the grantee should reconvey to the grantor the lands, the subject of the grant, if the grantor should repay to the grantee the sum of Rs 275 within

MORTGAGE—continued**1 FORM OF MORTGAGES—concluded**

1887, p 93, and in *Ali Ahmed v Rahmatullah*,
I. L. R., 14 All, 195, followed **NAND LAL v BANU**
[I. L. R., 20 All, 18]

2 CONSTRUCTION**70 ——— Rights of mortgagees—Pro**

viso in case of alienation of mortgaged property—
 Certain words in a mortgage deed stipulating that in
 the event of the property mortgaged being sold in
 execution of a decree, or otherwise alienated the
 mortgagee should recover from any other property in
 the possession of the mortgagor whose person should
 also be liable for debt were construed as merely in

[11 W. R., 544]**71. ——— Construction of**

instrument of mortgage—An instrument mortgag-
 ing villages for a sum payable within a certain period
 by instalments and making distinct provision that,
 upon default in payment of an instalment the mort-
 gagee by his servants was to take possession, and
 after paying the revenue and the expenses of collec-
 tion, to credit the balance towards payment of the
 instalment, also contained the following "Should on
 the expiration of the term of this instrument, any
 money remain due then, till payment thereof, posses-
 sion will continue according to the terms herein set
 out. If I do not accept this, then, as soon as the
 breach of promise occurs they will at the end of the
 year realize the whole amount of instalment by sale
 of the villages and of other moveable and immovable

upon default in payment of an instalment, leaving

should take possession upon such a default, and
 also might sell if the mortgagor objected to his
 paying the rents in reduction of the principal and
 interest due **DEPUTY COMMISSIONER OF RAJ B-**
ELLI v. RAJMAL SINGH
[I. L. R., 11 Cal., 237; I. R., 12 I. A., 1]

72. ——— Arrangement for repay-

ment by instalments—*Set off of rent*—On the 1st of
 November 1866, A covenanted to pay to B Rs 351
 with interest on the 16th of May 1870, and pledged
 certain property for repayment thereof. At the time
 of the mortgage this property was held by B, the mort-
 gagee under a lease which expired on the 10th of
 September 1870. On the 5th of November, 1866 A
 granted to B a lease of the property hypothecated

MORTGAGE—continued.**2. CONSTRUCTION—continued**

for a term of seventeen years from the 10th of Sep-
 tember 1870 at a rent of Rs 304 a year. This
 lease created the mortgage debt and the necessity
 of providing for payment of it and contained a cove-
 nant that out of the annual rent B should retain
 Rs 1600 on account of the debt and pay the
 remainder to A in a suit to redeem and cancel the
 bond and lease. Held that they did not form one
 mortgage transaction, but were separate and in-
 dependent, and that A would only be entitled to set
 the rent retained against the mortgage debt and interest,
 and thenceforth to receive the full rental of Rs 351
 a year for the term of the lease yet unexpired.
JOONVA PERSHAD SOOROOOL v. JOONVA LAL MANTU
[2 C. L. R., 23]

73 ——— ——— Operation not is

terms in the mohals villages and lands comprised in
 the sanad of a talukhari estate. It was now questioned
 whether one of the villages comprised in the sanad was
 part of the mortgaged property. The original records,
 uncontrolled by anything, in any record declared it
 the above subject to the mortgage. The deed was
 accordingly held to include the village in question,
 effect being given to the operative words in their ordi-
 nary meaning **LAND MORTGAGE BANK OF INDIA v.**
ABUL HASIM KHAN **I. L. R., 26 Cal., 395**

74. ——— Previous mort-

gage—Sale under mortgage decree—Effect of re-
 moval of an encumbrance by a creditor—*See previous*
 —Where a person mortgages his interest in a property,
 —that interest being restricted or limited in some
 manner at the time of the mortgage, the mortgagee's
 lien is not limited to the interest so restricted and does
 not cease on the restriction being removed. The removal
 of encumbrances from the estate of a mortgagor
 effected by himself will as a general rule accrue to
 the benefit of the mortgagee by increasing the value
 of the latter's security **SHYAMA CHURN BHUTTA**
CHAUHAN v. ANANDA CHANDRA DAS
[3 C. W. N., 233]

75. ——— ———

Mortgagee's lien of another debt due to mortgagee—*Set off of*
from sum advanced at date of mortgage—*Clause*
in deed undertaking to pay off all debts
taking back the loan—*Old debt not a charge on*
land, but redemption not to be a payment of the
debt—If mortgagor certain land to the lender's
 father for a sum of 164 advanced by the latter
 at the date of the mortgage. The mortgagor then
 stated that he owed the mortgagee another debt of
 1110, which was due on a separate bond and it
 contained a clause in the following terms "The
 principal sum of Rupees (1110) due on that account,
 as also this document, I will pay at the set term and
 take back the land along with this document as well
 as that document. Till then you are to continue
 to enjoy the land." The mortgagee, having obtained a decree against the mortgagor,

MORTGAGE—continued.**1. FORM OF MORTGAGES—continued.**

plaintiff reciting the previous transfer and agreeing to retransfer the land to the plaintiff's name on the 12th July 1880 if the debt which would then be due should be paid off: "In the village of Behrampur is your (plaintiff's) field, Survey No. 116, measuring 5 acres 3 gunthas bearing assessment R16. You (plaintiff) have got it transferred to our name. That field therefore stands in our (defendants') name in the Government records. You owe a debt to us. On account of that debt you have transferred it to our name. The field shall be retransferred to your name when you repay the said debt to me. You have cultivated the field for the produce of Samvat 1916, and a lease in respect thereof you have this day passed to me. And a stamp paper was purchased at the time of the transfer for the execution of this agreement, but no agreement was then passed. This agreement is therefore this day passed to you when the lease is executed. And you owe me (a) debt bearing interest. I will pay out of my pocket the expenses to be incurred at present in cultivating the field. The debt due to me would in all amount to R100. If you repay all these rupees due to me till the Vaishakh Shudh 6th, Samvat 1936, I will take them and retransfer the field to your name. And if you fail to pay (them) till Vaishakh Shudh 15th, you will have no claim whatever to the said field. I shall not take the rupees after the 4th (chauth), nor shall I give (or transfer) the field to you. I shall lease the field to any one I like without keeping any claim of yours as regards cultivation, mature and hedge. You have no claim or right whatever." The plaintiff brought this suit to redeem the land, alleging that it had been mortgaged to the defendant, and that the debt had been paid off. The defendant contended that the transaction in 1877 was not a mortgage, but a sale of the land to him, and that the document of July 1879 was an agreement to re-sell it to the plaintiff. *Held* upon the evidence that the transaction in 1877 was a mortgage to the defendant, and not a sale. **PATEL RANCHOD MORARJI BHUKABHAI DEVIDAS . I. L. R., 21 Bom., 704**

87. — Sale with a right of re-purchase—Conditional sale effected by two contemporaneous deeds—Evidence dehors the documents showing what the transaction really was—Intention of parties.—The plaintiff and the defendants executed upon the same day two documents. The one purported to be a deed of absolute sale of a certain estate by the plaintiff to the defendants. The other was an agreement by which the defendants covenanted, upon payment of a certain sum by a specified date, to receive the property sold by the first-mentioned deed. *Held* that evidence was admissible dehors the documents to show that the intention of the parties was not to effect an outright sale with merely a right of re-purchase under certain conditions left in the vendor, but to constitute a mortgage by conditional sale or bai-bil-wafa. The mere fact of a deed of absolute sale being accompanied by another giving a right of re-purchase will not, for that reason alone, constitute the transaction one of mortgage, but the intention of the parties must be

MORTGAGE—continued.**1. FORM OF MORTGAGES—continued.**

gathered from the terms of the deeds or from the surrounding circumstances or from both. *Aderon v. White*, 2 De G. & J., 105; *Lincoln v. Wright*, 4 De G. & J., 16; *Bhagwan Sahai v. Bhagwan Din*, L. R., 17 I. A., 98; I. L. R., 2 All., 387; *Ali Ahmad v. Rahmat-ullah*, I. L. R., 14 All., 195; *Ramasami Sastrigal v. Samiyappanayakan*, I. L. R., 4 Mad., 179; *Bapuji Apaji v. Senarajji Maradi*, I. L. R., 2 Bom., 231; *Bhup Kuar v. Mutanti Begam*, I. L. R., 6 All., 37; and *Fenkappa Chetti v. Akku*, 7 Mad., 219, referred to. **BALKISHAN DAS v. LEGOR . I. L. R., 19 All., 434**

Affirmed by the Privy Council.

[I. L. R., 22 All., 149]

L. R., 27 I. A., 53

4 C. W. N., 153

68. — Deed of conditional sale—Bai-bil-wafa, Nature of—Transfer of Property Act (IV of 1882), s. 58—Pre-emption, suit for.—The transaction known to Mahomedan law as a bai-bil-wafa is a mortgage within the meaning of s. 58 of Act IV of 1882, and not a sale. The plaintiff in a suit for pre-emption had, prior to the sale of the property claimed, executed a deed in respect of his share in the village in virtue of which he claimed the right to pre-empt, the material portion of which deed was as follows: "Thirdly, if I, the vendor, or the heirs of me, the vendor, Ali Jan, alias Ali Ahmed, should pay off the entire consideration money mentioned above on the Purnamashi of Jeth Sudi 1299 Fasli to the said purchaser, she should without any objection or hesitation receive the money, and, returning the property so described above in the document to me, the vendor, revoke the sale." *Held* that this deed was a bai-bil-wafa or mortgage by conditional sale, and that, as the conditional sale had not become absolute at the time when the right of pre-emption accrued, the conditional vendor or mortgagor had still a subsisting right of pre-emption. *Bhagwan Sahai v. Bhagwan Din*, I. L. R., 12 All., 387, distinguished. **ALI AHMED v. RAHMATULLAH** [I. L. R., 14 All., 195]

69. — Wazib-ul-arz—Co-sharer—Mortgagee of a co-sharer.—Two co-sharers in a village, A and G, mortgaged their proprietary interest, with possession, to L. L. made either an assignment or a sub-mortgage of her interest under the mortgage for a term of twenty years to B, with a foreclosure clause in case of non-payment. B afterwards transferred to X for an unexpired period of sixteen years and eleven months the interest in the property which he had acquired from L. One N L a co-sharer in the village, thereupon brought a suit for pre-mortgage in respect of the transfer to X, on the basis of the village wazib-ul-arz, which gave a right of pre-emption or pre-mortgage when the share of a co-sharer should be sold or mortgaged. *Held* that, inasmuch as B could not be regarded as co-sharer, no right of pre-mortgage arose in favour of N L in respect of the transfer of the mortgagee interest from B to X. The principle laid down in *Khair-un-nissa Bibi v. Amin Bibi*, *Weekly Notes*, All.

MORTGAGE—continued.**2. CONSTRUCTION—continued.**

attached the land in execution. The defendant (son of the original mortgagee) thereupon claimed that he held a mortgage upon it to the extent of Rs 164. On the 9th March 1881 the Court executing the plaintiff's decree made an order allowing the defendant's claim only to the extent of Rs 64, and directing that the land should be sold subject to the defendant's lien for that sum. The plaintiffs bought the land at the execution-sale, and offered the defendant Rs 64 in redemption of his mortgage, which the defendant refused. The plaintiffs then brought the present suit to recover possession. *Held* that the charge on the land did not include the old debt of Rs 100. There were no words in the mortgage-deed expressly making that debt a charge on the property. The provisions in the deed only made the equity of redemption conditional on the payment of both the debts. *Quære*—Whether, under the circumstances of the case, the purchaser at the execution-sale would be bound by such a condition. **YESHWANT SHENAI v. VIRUPA SHETI**. **I. L. R., 13 Bom., 231**

78. ————— *Priority of mortgage—Intention of preserving a prior security preserved—Mortgagee—Mortgagor.*—On the 29th November 1882 *H* mortgaged to the plaintiff his one-third share in a house and garden to secure Rs 1,000 with interest at 12 per cent. On the 3rd January 1884 *H* mortgaged his one-third share in the same house to a third person to secure Rs 1,000 with interest at 15 per cent. On the 14th May 1884 *H* and his two brothers mortgaged to the plaintiff the entirety of the said house and garden to secure Rs 3,100 with interest at 15 per cent. This last mortgage recited the mortgage of 29th November 1882, and a further loan of Rs 100 by the plaintiff to *H*, and contained the following clause: "Now in order to liquidate the said debt, and on account of our necessity, we three brothers do this day mortgage to you whatever right, title, and interest we have in the said two premises and take the loan of Rs 3,100: out of this money we have also liquidated the said debt, therefore for interest of the said money we are paying at the rate of Rs 5 per month." *Held* that the transaction of the 14th May 1884 did not amount to payment of the original debt, but was in reality a further advance and a fresh security for both the old debt and the fresh advance, on different terms as to interest, the old debt remaining untouched; but that, even had the original debt been satisfied thereby, that fact would not have necessarily destroyed the security, the presumption being, unless an intention to the contrary were shown, that the plaintiff intended to keep the security alive for his own benefit. **Gokuldas Gopaladas v. Puranmal Premsukhdas**, **I. L. R., 10 Cal., 1035**, followed in principle. **GOPAL CHUNDER SREEMANY v. HEREMBO CHUNDER HOGDAR**. **I. L. R., 16 Cal., 523**

77. ————— *Mortgage of a portion of bhag—Particulars of property stated in deed—Leading description—Falsa demonstratio—Bhag—Bom. Act V of 1862, s. 3.*—A mortgage-deed of certain bhagdari lands stated that "all the properties appertaining to the entire bhag" were

MORTGAGE—continued.**2. CONSTRUCTION—continued.**

thereby mortgaged to the plaintiff. The bhag comprised (*inter alia*) four gabbans (building sites). But the clause, which set forth the particulars of the property mortgaged thereby, specified only two gabbans, one only of which belonged to the bhag and the other did not. The deed then proceeded: "According to these particulars, lands, houses and gabbans, barnyards, wells, tanks, padars and pasture lands also, together with whatsoever may appertain to the bhag—all the properties appertaining to the whole bhag have been mortgaged and delivered into possession There is no other property appertaining to the said bhag of which mention is not made here. *Held* that the particulars were 'the leading description,' and the supplementary description of them as constituting the entire bhag should be regarded as *falsa demonstratio*." *Held* also that the mortgage, so far as it included property belonging to the bhag, was valid under the third section of Bombay Act V of 1862, but was valid as to property not comprised in the bhag. **THIBHOVANDAS JEKISANDAS v. KRISHNAHAR KUBERRAM**

[**I. L. R., 18 Bom., 283**]

78. ————— *Meaning of the term "sudi"—Interest post diem.*—The use of the term "sudi" (bearing interest) in a mortgage-deed held not to imply a covenant to pay *post diem* interest, there being a specific agreement to repay the mortgage-debt, principal and interest, in seven years. **RIKHI RAM v. SHEO PARSHAN RAM**

[**I. L. R., 18 All., 316**]

79. ————— *Conditional sale—Karanamah.*—The appellant became security for the payment by the respondent of the Government dues in respect of a mootah then about to be sold for those dues, and by the first karanamah entered into by the parties it was stipulated that, on default of the respondent to pay any part of the instalments, the appellant was to obtain a transfer of the property, and to retain it, after returning to the respondent the money which may have been paid by him. By a second karanamah entered into on the same day, the plan of a conditional sale provided by the first karanamah was reduced to a mortgage, with a covenant between the parties that, whenever the appellant should take possession of the mootah for the purpose of enabling him to discharge the amount for which he became security, he should restore the mootah to the respondent as soon as he was reimbursed all that he had advanced out of the rents and profits of the mootah. *Held* that the transaction was in the nature of a mortgage, and that there was no such inconsistency between the two instruments as to make the second invalid. **KAKERLAPODDY JAGGANADHA RAO v. VUTSAYOY JAGGANADHA JAGAPUTTY RAO**

[**5 W. R., P. C., 117; 2 Moore's I. A., 1**]

80. ————— *Relief after time named in conveyance.*—Plaintiff executed to defendant a document of which the following is a translation: "The muddata kriyam executed on the 10th April 1835 by the Madugula zamindar to the zamindar of Bobbili. As I have conveyed to you as sale for

MORTGAGE—continued

2 CONSTRUCTION—continued

and could be entertained
SHIKOH GABONER

93 ——— Mortgagor and mortgagee

the mortgagor as a agent for the mortgagee KRISH
NAJI LAKSHMAN RAJADE & SITARAM MURARAY
JAKHI I L.R. 5 Bom 493

84 Suit for arrears
of interest and sale—Suit before principal sum
became due—Right of suit—A suit for arrears of
interest accrued due on a mortgage and for the sale
of the property comprised therein was brought before
the date fixed for the repayment of the principal
the mortgage provided that on default of payment
of interest on the due date interest should be charge-
able on the arrears and also that interest at an en-
hanced rate should be chargeable on the principal
Held that the plaintiff was so entitled to sue for
the arrears of interest as to bring the mortgage
property to sale before the principal became due
 KANUNU NATASA I L R. 14 Mad. 477

95 _____ *Amans sul*
tani *Uea* *nj* of the *oids* *Destr* *u* *ti* *o* *n* of *sub*
je *t* of *mort* *age*—*Cost* of *re* *u* *l* *d* *i* *n* *g* *y* *m* *o* *r* *g* *e* *s*—
 —A mortgage deed stipulated that, in the event of
 the mortgaged house being destroyed by an
sul *t* *a* *'* (the evils from the skies) the king the
 mortgagor should rebuild it and if he did not so

h use the mortgagee rebuilt it The mortgage
brothers it to the debtors Held that the re-
newal of the estate should give the use as a
tenant to the re-mortgagee the estate of
the use was in the nature of a usufruct
between the mortgagee and the estate
SANKARANATHAN & ANTHA v. EVI CANDI
[I L R. 14 Bom. 23]

88 _____ Intention of par
ties—Mortgagee to have possession for ten years
and to receive profits in lieu of interest—Volo-
ganger to receive possession in the year he paid
the money after the expiration of the period
of sale—Cl 3 s 13 of Bm Rer 1 of
1827—Mortgagee's personal remedy against the
mortgagor—Limitation—Wl r a mortgagee ob-
tained a stipulation that the mortgage should
terminate possession of the mortgaged property and
enjoy the profits in lieu of interest for ten
years and that after the expiration of that period
the mortgage should enter into possession of the
year in which he paid the debt Held that it was
the intention of the parties that the mortgagee
property should not be sold in satisfaction of the mort-
gage-debt that the mortgage was to run in
possession for ten years, and that, under cl 3 s 13

MORTGAGE—continued

2. CONSTRUCTION—continued

of Bombay Regulation V of 1877, he had no power of sale. The mortgagee having brought his suit within three years from the expiration of the stipulated period of ten years—*Held* that the mortgagee personally remedied him at the mortgagee's expense. **INNES & ABDEL LAHMAN**

87 Hypothecation
of our zamindari property - Ascertainment of
the rigors zamindari interest at date of mortgage
- A duty in deed Act IV of 1922 (Contract
Act) s 21-A till of 1922 (Transfer of Property
Act) s 59 - A deed of mortgage has created
the mortgaged property as our zamindari property
(zamindari apurad) have no further specification
or description It was proved that at the date of the
mortgage the mortgagee had a definite and ascer-
tained fractional share in the zamindari Held that
the order of zamindari property were sufficiently
clearly stated at any time were capable of being made
clear by the proof of the no transaction being at the
date of the mortgage deed though it was a specific
and absolute title right which was there-
fore not liable for uncertainty Khan Lal v
Muhammad Hussain Khan I L R 5 All 11
Bishen Doyal v Uddan Singh I L R S All
406 Ramail Pande v Balgoland I L R 9
All 105 Rao Maikhand v Beor Lal 2 v
W 263 Desai v Pitambar I I R 1 All 2 v
2 Allah v Gopal I Reser L R 13 Ap Cas
523 a D T M V D F Civil I 20 C 3 D
58 referred to SHADI LAL KHAN R Das

08 Kanam in rigoze
— Su t for sale of in rigozed pr pert — R g t of
kanamand to sue for am wat of kanam and for sale
of in rigozed property in default of payment —
A kaman lar ha ing a el to rec ver the amoi t of
his kanam and for sale of the mortga ed prty in
defa llt of pa nmt — He d tl t such a suit is
unus ista ble; that a kaman in the mort age aspect
of it is a usufructuary mortg e a l there is
no author ty to s port the co t to t that it is a
simple mortg e s ugt for an o s rva ion in
Ramanu B sh n D it n I L R to M t 366,
at p 39 BRIDEVI v VIRARAYAN
(I L R. 33 Mad. 350

08 Transf of Prop
perly at ss 40-43 (b) 63 100 Chi go - Len
- Transfer of interest in immovable prop rty
Ar's Blue gñghar - Po roo sale in def ult
- B nd file purchaser fr value with nat e
Rights of purchaser sale in execut n f charge
In Janur 1883 a deed was obtained upon a
bond executed in Octo or 18 u wher by certain im
movable prop rty was made security for a loan (the
transaction being described not b the word "loan"
or "mortgage" but by the words "arl" and
"m st gñah") The instrument contained no ex
press covenant for sale of the property in behalf
of payment but it contained a covenant providing
obligation until payment, and a stipulation that in

MORTGAGE—continued.**2. CONSTRUCTION—continued.**

and the jury have until all the benefits which it pretended to cure to the defendant were realized by him. *ACHUTHAN SINGH v. KISHU LALL*

[20 W. R., 123]

80.

Usufructuary mortgage.

Condition for recovery of property. In a usufructuary mortgage it was stipulated that the property was to be reconveyed or repaid out of the principal sum lent, but nothing was said as to interest. Held that the condition implied that the usufruct was intended to be received by the mortgagee in lieu of interest, and therefore the mere fact that the amount of the principal had been received from the usufruct was no ground for the mortgagee being entitled to recover out of the property. *BENWARILAL v. MAROON HOODEN KHAN*

2 May, 190

87.

Simple usufructuary mortgage.

Right to have the property sold. *Distinct covenant to pay the principal.* *Possession in lieu of interest.* A merely usufructuary mortgage will confer no right to have the mortgaged property sold. But where there is a distinct covenant to pay the principal and the land is security for the same, the intention of the parties is that the property should be sold. Such a transaction is a simple usufructuary mortgage, and carries with it the right to have the property sold in default of payment of the principal. A mortgagee, who is entitled to possession in lieu of interest, and who does not take possession, loses his right to interest, and cannot ask that the property be sold in default in payment of interest, the property being security for the principal only. *MAHARAJA v. JORI*

I. L. R., 17 Bom., 425

88.

Power of sale.

Bom. Reg. I of 1827, s. 17, cl. 3.—Where a mortgage provided that the mortgagee was to take possession of the land and enjoy the profits in lieu of interest and the mortgagor was at liberty to recover possession in any year on payment of the principal amount,—Held that the mortgage was a usufructuary mortgage, and under the circumstances of the case it was not the intention of the parties that the property should be sold, and that the mortgage-deed contained a special agreement which took the case out of the provisions of s. 3, s. 15 of Regulation V of 1827, which was the law in force at the time the mortgage was effected. *SARASWATY AMAR BHATT v. KRISHNA KATRAO RAMRAO SHINDE*

[I. L. R., 20 Bom., 296]

89.

Mortgage of a

mixed character partly simple and partly usufructuary. *Decree for sale.* *Transfer of Property Act (I of 1882), s. 58.*—In construing a mortgage-deed, the terms of which are of a doubtful character, the intention of the parties, as deducible from their conduct at the time of execution and other contemporaneous documents executed between them, is to be looked to. Mortgage-deeds of a mixed character and other than those expressly defined in s. 58 of the Transfer of Property Act, 1882, must be construed as far as possible in accordance with the covenants contained in them. Where a deed is partly of the

MORTGAGE—continued.**2. CONSTRUCTION—continued.**

nature of a usufructuary mortgage and partly of the nature of a simple mortgage, the mortgagee is entitled to bring the mortgage partly to sale under the conditions set out in the deed. *Shanker Lall v. Poorun Mal, 2 Agra, 150; Phul Kuar v. Murlidhar, I. L. R., 2 All., 527; Jugul Kishore v. Ram Sahai, Weekly Notes, All., 1886, p. 212; Umrao Begam v. Fadi-ullah, Weekly Notes, 1888, p. 171; Ramayya v. Gurava, I. L. R., 14 Mad., 232; and Sirakami Ammal v. Saundaran Jeyan, I. L. R., 17 Mad., 131, referred to.* *JAGAN HUSAIN v. RANJIT SINGH*

[I. L. R., 21 All., 4]

90.

Power to cancel zur-i-peshgi lease.—The words in a zur-i-peshgi lease, "after the expiry of the term it will be competent to me (the mortgagor) in the month of Jait of any year I can to pay the zur-i-peshgi and cancel the lease," were held to do no more than bar the mortgagee's re-entering in the middle of any year, in the event of the mortgagee's occupation continuing after the expiry of the lease, owing to the mortgagee's default to pay off the loan, and that it contained no undertaking by the mortgagee to hold on until it suited the mortgagor to pay him off. *ROY GOWDER SENEK v. BRODER PERSHAD*

17 W. R., 211

91.

Construction of

Arrears of rent from tenants and mortgagors. *Right to.*—By the terms of a deed of usufructuary mortgage the mortgage was redeemable at the end of the term by payment of the principal and the arrears of rent due from the mortgagors and the tenants. It was held, in a suit by the mortgagee (who was in possession of the mortgaged property at the time of suit), to recover the mortgage money and arrears of rent, with regard to the rents due by tenants, that it was clearly the intention of the parties that arrears reasonably due were to be paid and not such as arose from the negligence of the mortgagee, and as it was not shown that the arrears due by tenants could not have been realized by due diligence, and the mortgagee had it in his power to realize the rents, the mortgagee was not entitled to recover such arrears. *CHHOT LAL v. KAZRA PARSHAD*

7 N. W., 100

92.

Suit for excess

of Government revenue paid under.—By the terms of a deed of usufructuary mortgage the mortgagor accepted the liability on account of any addition that might be made to the demand of the Government at the time of settlement. During the currency of the mortgage tenure the mortgagors, averring that they had to pay a certain sum in excess of the amount of Government revenue entered in the deed of mortgage from 1279 to 1281 Faslî, sued the mortgagor to recover such excess. Held that, inasmuch as no settlement of accounts was contemplated or was necessary under the provisions of the deed of mortgage, and such deed did not contain a provision reserving the adjustment of any sums paid by the mortgagors in excess of the amount of the Government demand at the time of the execution of such deed to the time when the mortgage tenure should be brought to an end, the suit was not premature

MORTGAGE—continued**3 POSSESSION UNDER MORTGAGE***—continued*

recovery of possession—Nature of possession—Right of redemption—A mortgagee by condition of sale who was put into possession of the mortgaged pro

limitation The possession recovered is however possession as mortgagee subject to the mortgagor's right of redemption. AMAN ALI v AZZAR ALI MIA

(I L R, 27 Cal, 185

104. — Disposition of mortgagee

—Usufructuary mortgage—Construction of deed—Suit for money lent on dispossession—The plaintiff

there was no express condition in the bond to the effect that it would be recoverable in the event of

from the present defendant only her share of the debt GIARAM CHUCKERBUTTY v BERODA DABER

(27 W R, 484

105. — Mortgagee dis

PITAMBUR MISSEK v RAM SURUN SOOKOOI

(25 W R, 7

gaged property sold for arrears of Government revenue except to the extent that he allows that the usufruct of the property while he holds the mortgage has not satisfied his debt HIRDEO NARAIN SINGH v PUZZA HOSSAIN

(1 W R, 270

107. — Mortgagee in possession

under an agreement to pay rent to mortgagor—Usufructuary mortgage—Accrual of interest—Right of distraction of mortgaged premises by fire—Right of

MORTGAGE—continued**3 POSSESSION UNDER MORTGAGE***—continued*

mortgagor to rent—The plaintiff borrowed Rs 400 from the defendant and mortgaged to the latter for eight years a piece of ground with a well on

pay Rs 120 as rent to the mortgagor Within four years from the date of the mortgage the well was

of the term for the redemption of the mortgage and that he was bound to pay to the plaintiff the rent claimed by him Held by INNES J that the loss of the premises which had arisen from accidental causes could not affect defendant's right to recover the full amount due to him on the mortgage There was no alteration in the liability but merely in the source and mode of discharge The premises having ceased to exist nothing arising from the income could be credited towards the mortgage and there was no residue available to pay plaintiff Held by MUR-

ment the existence of the warehouse which produced the income of Rs 120 a month was the basis of the contract to make it and the basis having failed the obligation resting thereon must likewise fail VENGATESH VARA v KESAVA SHETTI

(I L R, 3 Mad, 187

108. — Deprivation of security by wrongful act of mortgagor Right to return of consideration—Where money is lent on a mortgage deed on the condition that if returned with

of the stipulated period RADHA CHURN SHARMA v PARBUTTEE CHURN DEITY

(25 W R, 52

usufructuary lease before he has paid himself the amount advanced he has a right, unless the terms of the lease are very special to call upon the lender for the money advanced of the loan SANKU GOYAL v RAM CHANDER DIAL

(21 W R, 223

110. — Mortgagee in possession, Liability of, to protect the mortgaged property from claims under a paramount title

MORTGAGE—continued.**2. CONSTRUCTION—concluded.**

the event of the property specified being destroyed or proving insufficient to satisfy the debt, the obligee might realize the amount from the obligor's person and other property. The decree directed the sale of the property as in the terms of an ordinary decree for the sale of mortgaged property. In 1885, before any steps had been taken in execution of the decree, the same property was sold in execution of a simple money-decree against the obligor, and the purchaser obtained possession. It was found as a fact that at the time of the sale the bond of October 1875 and the decree thereon of January 1883 were not notified, but through no fault of the obligee decree-holder, and that the purchaser was a *bona fide* transferee for value without notice of the bond and decree. *Held* that the words "arh" and "mustaghraq" used in the bond implied a power of sale in default and denoted a mortgage without possession; and the transaction, though entered into prior to the passing of the Transfer of Property Act (IV of 1882), must be regarded as amounting to a simple mortgage as defined in s. 58 (b) of that Act, and not as merely creating a charge as defined in s. 100; and that consequently the rights of the obligee must prevail over those of the subsequent *bona fide* purchaser for value without notice of the bond and the decree thereon. *Held* also by MAHMOOD, J., that the title of the judgment-debtor at the time of the sale in 1885 in execution of the simple money-decree was subject to the mortgage-decree of January 1883, and the purchaser at the sale could acquire no higher title than the judgment-debtor possessed, and was equally bound by the terms of the decree of January 1883 in respect of the property which he had purchased, and could not prevent the property being sold under that decree except by paying up the decretal money. *Unno-poorna Dassie v. Nufur Poddar*, 21 W. R., 148, and *Enayet Hossein v. Giridhari Lal*, 2 B. L. R., P. C., 75: 12 Moore's I. A., 366, referred to. *Per* MAHMOOD, J.—The power of sale mentioned in s. 58 (b) of the Transfer of Property Act is not a power in the mortgagee to bring the mortgaged property to sale independently of a Court. The observations on this point of MUTISWAMI AYYAR, J., in *Rangasami v. Muttu Kumarappa*, I. L. R., 10 Mad., 509, of BIRDWOOD and JARDINE, JJ., in *Khemji Bhagvandas v. Rama*, I. L. R., 10 Bom., 519, and of PETHERAM, C.J., in *Sheoratan Kuar v. Mahipal Kuar*, I. L. R., 7 All., 258, dissented from. The nature of simple mortgage, hypothecation, charge and lien discussed. *Aliba v. Nana*, I. L. R., 9 Mad., 218; *Martin v. Pursram*, 2 Agr., 124; *Raj Coomar Ram Gopal Narain Singh v. Ram Dutt Chowdhry*, 13 W. R., F. B., 82; *Moti Ram v. Vitai*, I. L. R., 13 Bom., 90; *Gopal Pandey v. Pursotam Das*, I. L. R., 5 All., 121; *Shib Lal v. Ganga Prasad*, I. L. R., 6 All., 551; *Giridhar Ranchoddas v. Hakamechand Revachand*, 8 Bom., 75; *Sobhagechand Gulabchand v. Bhaichand*, I. L. R., 6 Bom., 193; *Naran Purshotam v. Daolatram Virchand*, I. L. R., 6 Bom., 538; and *Durga Prasad v. Shambhu Nath*, I. L. R., 8 All., 86, referred to. KISHAN LAL v. GANGA RAM

[I. L. R., 13 All., 28]

MORTGAGE—continued.**3. POSSESSION UNDER MORTGAGE.**

100. ——— Rights of mortgagee in possession.—A mortgagee taking possession under the terms of the mortgage is entitled to have the property in the same condition as it was in when it was mortgaged. *GOBIND CHUNDER BANERJEE v. WISE*

[12 W. R., 19]

101. ——— Covenant for possession by mortgagee—Omission to give possession—Right to sue for mortgage-money.—A deed of mortgage and conditional sale contained a covenant for possession by the mortgagee during the mortgage term. Possession was withheld, though the mortgagor received the mortgagee-money. *Held* that an action would lie by the mortgagee against the mortgagor for recovery of the principal and interest money advanced. *OODIT PURKASH SINGH v. MARTINDELL*

[4 Moore's I. A., 444]

102. ——— Obstruction in getting possession—Usufructuary mortgage—Right of mortgagee to sue for mortgage-money—Transfer of Property Act (IV of 1882), s. 68 (b) and (c).—A usufructuary mortgagee, to whom possession of the mortgaged property had been delivered, sued the mortgagor for the mortgage-money on the ground that the mortgagor had sold a part of the mortgaged property, and the purchaser had deprived him of possession of such part. One of the conditions inserted in the deed of mortgage was that, if "on the part of the mortgagor, or other persons, any kind of dispute or any interference or obstruction took place in obtaining of possession by the mortgagee of the mortgaged property," the mortgagee should be entitled to sue for the mortgage-money. *Held* that such condition contemplated the case of the mortgagor, in the first instance, in breach of the conditions of the mortgage, failing to deliver possession to the mortgagee or to secure his possession from any obstruction or disturbance by other persons, but not the case of the mortgagee being deprived of possession after it had been once obtained and secured, and therefore the mortgagee was not entitled by virtue of such condition to sue for the mortgage-money. *Held* further that, the mortgagee's case being that he had been deprived of possession of a part of the mortgaged property, he would be entitled to sue for the mortgage-money only if he had been deprived thereof by or in consequence of the wrongful act or default of the mortgagor, and not if he had been deprived thereof by or in consequence of the wrongful act or default of other persons; that the sale by the mortgagor was not a wrongful act, there being no condition against alienation, and the sale by a mortgagor of his equity of redemption not being rendered wrongful or unlawful by any rule of law, nor being in itself a wrongful act; that a wrongful act by the purchaser, though committed under colour of the purchase, could not be said to have taken place "in consequence of the wrongful act or default of the mortgagor;" and that therefore the mortgagee had no cause of action. *JHABBU RAM v. GIRDHARI SINGH*

I. L. R., 6 All., 298

103. ——— Mortgage by conditional sale—Mortgagee in possession but afterwards dispossessed—Suit for foreclosure and

MORTGAGE—continued.**4 POWER OF SALE.**

116 ——— **Sale of mortgaged land in mofussil.**—*Deed in English form*—A sale without the intervention of a Court of justice of mortgaged lands situate in the mofussil of Bombay, under a power of sale contained in an indenture of mortgage in the ordinary English form is valid if due notice be given to the mortgagor of the mortgagee's intention to sell and the sale be fairly conducted. *Position of a mortgagee selling under his power of sale explained.* **LITABHEN NARAYANAS R. VANMAH SHAMJI. I. L. R., 2 Bom., 1**

117. ——— **Redemption, Suit for.**—*Injunction.*—When property mortgaged is situated in the mofussil but the parties to the mortgage are resident in Bombay, and the instrument of mortgage is in the English form, the parties must be held to have contracted according to English law, and to be entitled to enforce their rights according to that law. In such a case the mortgagee can exercise a power of sale contained in the mortgage-deed, and cannot be restrained from exercising such power, merely because the mortgagor has filed a suit for redemption. The mortgagor can only stay the sale *pendente lite* by paying the amount due into Court, or by giving *prima facie* evidence that the power of sale is being exercised in a fraudulent or improper manner, contrary to the terms of the mortgage. **JAGJIVAN NANABHAI R. SURIDHAR BALAKRISHNA NAGARKAR. I. L. R., 2 Bom., 252**

118. ——— **Sale to mortgagees under power of sale.**—*Effect of such purchase by mortgagee.* **Title acquired by him.**—A mortgagee purchasing the mortgaged property with the consent of the mortgagor, under the power of sale contained in the mortgage deed, acquires an unimpeachable title derived from the power of sale, which is altogether distinct from and overrides his title as a mere incumbrancer. The effect of such purchase being to vest the ownership of, and the beneficial title to, the property for the first time in himself, who had been previously a mere incumbrancer. **PURNANANDAS JIWANDAS R. JAYABAI. I. L. R., 10 Bom., 48**

[8 Bom., A. C., 142]

agrees to throw up a lease which he held from them for the mortgaged joint and claim immediate payment from the surplus sale proceeds—*Held that, before the mortgagors could withdraw the surplus proceeds from the Court, it would be necessary for*

MORTGAGE—continued**4 POWER OF SALE—continued**

them to give notice to the mortgagee of their intention to do so. **BHOORUN JOY ACHARJIA R. ANUND LALL CHOWDHURY. 22 W. R., 47**

121. ——— **Notice of sale.**—*Transfer of Property Act s. 61 (1).* In a deed of sale of property situate within the town of Malabar it was provided that a power of sale might be exercised after fifteen days' notice. The property was sold. *Held that s. 61 of the Transfer of Property Act, 1882, requiring three months' notice before such a power of sale shall be exercised, the condition as to notice was invalid but that the sale was nevertheless valid.* **MADRAS DEPOSIT AND SAVINGS SOCIETY R. PA. SANKAR. I. L. R., 11 Mad., 201**

122. ——— **Transfer of Property Act s. 67 (a).** *Usufructuary mortgage.*—*Remedy of mortgagee.* A usufructuary mortgage is not entitled in the absence of a contract to that effect, to sue for sale of the mortgaged property. *Semble.*—The construction placed on s. 67 (a) of the Transfer of Property Act, 1882, in *Kankalassam v. Subramanyam*, I. L. R. 11 Mad. 58, that a usufructuary mortgagee can sue either for foreclosure or for sale, but not for one or other in the alternative, is wrong. **CHATHU R. KUNJAN. I. L. R., 12 Mad., 109**

123. ——— **Surplus proceeds of sale in hands of mortgagee.**—*Interest charged against mortgagee on such surplus from date of sale.*—A mortgagee, who under his power of sale has sold the mortgaged property, must refund to the mortgagor any surplus moneys remaining in his (the mortgagee's) hands with interest at six per cent., i.e., the Court rate, from the date of the completion of the sale. **ABDUL KAHMAM R. NOOR MAHOMED. I. L. R., 18 Bom., 141**

124. ——— **Form of mortgage.**—*Form of mortgage.*—A mortgage, is only to be taken for securing due payment of the interest, the mortgagee paying the balance (if any) of the proceeds to the mortgagor, the mortgage is not a usufructuary mortgage, but a simple mortgage, and is governed by the general law applicable to mortgages of this nature. In such a case, although there is no contract to pay the principal other than that implied in the statement that the principal has been received, and that the property has been mortgaged for the stipulated term of years, and although there is no express provision that it is to be recovered from the mortgaged property, Regulation V of 1827 gives the mortgagee the right to bring the property to sale and s. 67 of the Transfer of Property Act (IV of 1882) confers upon him the same remedy. **YASHWANT NARAYAN KAMAT R. VITHAL DATARAM PAK LKAR. I. L. R., 21 Bom., 267**

125. ——— **Notice of sale.**—*Subsequent mortgage of same property.*—*Notice of sale to subsequent mortgagee.*—*Notice of sale to*

MORTGAGE—continued.**3. POSSESSION UNDER MORTGAGE**
—continued.

—*Bom. Reg. V of 1827, s. 15—Limitation for a suit to recover debt personally from the mortgagor where mortgage-deed contains no personal undertaking of repayment.*—By a registered mortgage-deed, dated the 11th May 1876, the defendant mortgaged certain land with possession to the plaintiff for a term of five years, the mortgage-deed stipulating that the plaintiff was to enjoy the profits, pay the assessment for it, and restore it to the defendant on repayment of the debt. But no personal undertaking to pay was given by the defendant. The land was sold by the revenue authorities for arrears of assessment due from the defendant for certain other lands of the defendant. The plaintiff now sought to recover the debt personally from the defendant. The Court of first instance dismissed the plaintiff's claim on the ground that the failure on the part of the plaintiff to pay the arrears of assessment disentitled him to recover the debt from the defendant personally. The plaintiff appealed to the District Judge, who referred the case to the High Court. *Held* that the plaintiff was not bound to save the mortgaged property from claims under a paramount title, his liability being confined under the terms of the mortgage to the payment of assessment for the property mortgaged which he had duly discharged, and that the case did not fall under s. 15 of Regulation V of 1827. The mortgage consideration for the debt having failed, the debt was recoverable within three years—the registered mortgage-deed containing no personal undertaking by the defendant (mortgagor) to pay the loan. *SUWARA KHANDAPA v. ANAJI JOTIRAV*

(I. L. R., 11 Bom., 475)

111. ——— Liability to mortgage lien of lands allotted under partition in lieu of share mortgaged.—*Land allotted in severalty to co-sharers of mortgagor.*—A mortgage of an undivided share in land may be enforced against lands which under a *batwara* or revenue partition have been allotted in lieu of such share whether such lands be in the possession of the mortgagor or of one who has purchased his right, title, and interest. Lands allotted in severalty by the *batwara* to the co-sharers of the mortgagor are not subject to the mortgage. The case of *Sidhee Nuzur Ali Khan v. Ojoodhyar Khan*, 10 Moore's L. A., 540, approved. *BRJ-NATH LALL v. RAMMOOREN CHOWDRY*

(L. R., 1 I. A., 106 : 21 W. R., 233)

112. ——— Transfer of mortgaged property by mortgagee in exchange for similar property.—*Right of mortgagor to property acquired by exchange.*—In 1865 N was in possession of six shops in a market-place at Etawah. He was in possession of two as mortgagee, and of the remaining four as proprietor. The Municipal Committee of Etawah having decided to establish the market in a fresh place, and to use the site of the old market for other purposes, arranged with N to take the sites of his six shops in the old market-place, and to give him in lieu of them sites for six shops in the new.

MORTGAGE—continued.**3. POSSESSION UNDER MORTGAGE**
—concluded.

Under this arrangement, he built six shops in the new market-place. Subsequently, the mortgagor of one of the old shops claimed possession of one of the six new ones on payment of the mortgage-money and cost of constructing the shop. *Held* that the claim could not be allowed, inasmuch as it could be justified only by proof of an agreement binding upon the parties at the time when the transaction occurred that some specific one among the new shops should be substituted for the old one which was the subject of the mortgage, and it had not been found that any such agreement was made. *NIDHI LAL v. MAZHAR HUSAIN* I. L. R., 7 All., 436

113. ——— Sale to mortgagee of portion of mortgaged property.—*Re-sale to mortgagor.*—*Equitable right to whole of property mortgaged.*—A mortgaged 14-anna share in a certain mouzali to B. B obtained a decree on his mortgage-bond. Subsequent to this decree B bought from A a 2-anna share in the mouzali, but at a later period sold the share to A. In execution of another decree which B had obtained against A, the 12-anna share in the mouzali belonging to A was put up for sale and purchased by B. B next applied for execution of the decree he had obtained on the mortgage-bond, seeking to sell the 2-anna share which remained in the mouzali as part of the property mortgaged to him. *Held* that, so long as A had only a 12-anna share of the property in his possession, B's security was of necessity reduced to that amount, but on A's again becoming the owner of the whole 14 annas, B had an equitable right to demand that the 14 annas should be held subject to his mortgage. *DEOWIE CHAND v. NERRAN SINGH* . I. L. R., 5 Cal., 252 : 4 C. L. R., 150

114. ——— Mortgage of property of which mortgagor is not, but afterwards becomes, owner.—If a person mortgages property of which he has no present ownership, and subsequently becomes the owner of the mortgaged property, the lien created by the mortgage attaches to such ownership, and subsequent purchasers from the mortgagor take subject to the equities which affected the property in the hands of the mortgagor. *MAHOMED ASSUDOOOLAH KHAN v. KARAMUTOOLAH*

[4 N. W., 11]

115. ——— Mortgage of moiety of property in reversion.—*Mortgagor subsequently inheriting moiety.*—*Rights of mortgagee in execution of his decree.*—A, having mortgaged an 8-anna share of certain property which he had inherited from his father, subsequently succeeded to the remaining 8-anna share in the same property. It appeared that in respect of the property mortgaged A was entitled only to a reversion on the death of his mother. *Held* that the holder of a mortgage-deed on the mortgage was not at liberty to proceed against the other 8-anna share. *NISTARINI DEBI v. BROJO NATH MOUKHOPADHYA* 10 C. L. R., 229.

MORTGAGE—continued.**5 SALE OF MORTGAGED PROPERTY**
—continued.

landed property subject to that lien, — *Held* that he was bound to recoup himself from the mortgaged property, and that he could not get any part of the surplus sale proceeds, unless it were shown that the mortgaged land had not produced enough to satisfy his claim. **KALER DAS GHOSE v LAL MOHUN GHOSH** 18 W. R., 308

See **FUTEN ALI alias NAYNA MRAH v GREGORY** [5 W. R., 115]

120. — **Rights of successive mortgages—Prior sale under second mortgage—Right of purchaser**—A property was mortgaged in succession to two different persons. Under the latter of

MORTGAGE—continued.**5 SALE OF MORTGAGED PROPERTY**
—continued.

foreclosure—A executed in favour of B a simple mortgage of certain property. He afterwards executed in favour of C a mortgage by *bi bil wafa*, or conditional sale, of the same property. C obtained a decree for foreclosure, and got possession thereunder. B then obtained a money-decree against A, and in execution seized and sold and became the purchaser of the said property, and was put into possession of it. On C suing B to recover possession on, B claimed to be entitled to hold the property by reason of the prior lien which he had under the simple mortgage. *Held* that as B had only got a money-decree and no declaration of his rights as mortgagee, he could not set up a prior lien against C. **HASIMANVISSA BIBI v HURANNISSA BIBI** 2 B. L. R., Ap., 8

KUSSEEMOOVISSA BEEBEE v HURANNISSA BIBI [10 W. R., 488]

134. — *Suit for money.*

DURFO NARAIN MAHATAH v NULLETA SOONDURER DOSS 11 W. R., 332

131. — **Right of prior lien—Sale of hypothecated property for money decree—Lien of subsequent mortgages with order directing sale—Right of purchaser**—Where property

lien, as he not only stands in the shoes of the debtor, but has purchased all rights in the property hypothecated by the debtor when his hypothecation was made, and has thus also acquired the rights of the decree holder to satisfy whose due the property was sold when this purchaser purchased. **SHEO PRASAD SINGH v BHOJGO DANOO** 7 W. R., 234

132. — **Right of holder of money-decree against subsequent mortgages after foreclosure**—A executed a bond in favour of B, hypothecating certain immovable property. B recovered a money decree against A, and caused the mortgaged property to be sold. B became the purchaser at the sale in execution, and was put in possession. C, who held possession of the property

S C KUSSEEMOOVISSA BIBI v HURANNISSA BIBI 15 W. R., 105

133. — **Right of holder of money-decree against subsequent mortgages after**

elsewhere. "Should even then all the money be not realized, I shall in that case be held responsible for the remainder, that is to say, I shall myself pay if I should make any objection it shall be false and inadmissible." The plaint asked for a money-decree. **PHILAH, J.** refused to admit the plaint. **UMASHENDARI DAS v UMACHARAN SARKHAN**

[6 B. L. R., Ap., 117]

135. — **Attachment—Notice—Fraud**—The plaintiffs advanced a sum of money on the security of a simple mortgage of a

The appellant obtained a simple money-decree and caused the premises to be attached and sold. Before the sale the plaintiffs gave notice of their lien, and in consequence the appellant purchased for a trifle. The plaintiffs brought the present suit for a declaration of their prior lien, and for a re-sale of the premises in satisfaction of their mortgage. The appellant contended in his defence that, as fraud was perpetrated by the plaintiffs in inducing him to make the loan without disclosing their prior lien, his mortgage should have priority over theirs. *Held* that the appellant must be considered as having the first

MORTGAGE—continued.**4. POWER OF SALE—continued.**

subsequent mortgages—Delay in selling—Rescission of notice of sale—Suit by second mortgagee to prevent sale—Offer to redeem joint mortgage—Right of mortgagee—Injunction to restrain sale.—Certain property was mortgaged to the defendants in 1885 for Rs 10,000, and the mortgage-deed contained the usual power of sale on notice to the mortgagors or their assigns. The debt was not paid, and the defendants, on the 31st August 1891, gave notice of sale to the mortgagors, but did not then proceed further in the matter. Three days after this notice, viz., on the 3rd September 1891, the mortgagors mortgaged the property to the plaintiffs for Rs 10,000. On the 18th November 1892 the plaintiffs by letter offered to transfer their mortgage to the defendants or to join with them in selling the property. In the event of their being unwilling to accept either of these proposals, the plaintiffs requested the defendants to render an account of the sum due to them in order that they (the plaintiffs) might, if so advised, redeem the defendants' mortgage. On the 3rd December 1892 the plaintiffs by letter enquired whether the defendants were willing to re-convey the mortgaged property on payment of a certain sum, which was less than the amount the defendants claimed, but they did not positively offer to pay the defendants either that amount or the amount which might be found to be due. In April 1893 the defendants advertised the property for sale on the 27th of that month without giving notice of sale to the plaintiffs, and on that day the plaintiffs filed a suit and obtained a rule, restraining the defendants from proceeding with the sale. In the argument of the rule it was contended for the plaintiffs, first, that the defendants had no power to sell, because their mortgage-deed required previous notice of sale to be given to the mortgagors or their assigns, and no such notice had been given to the plaintiffs who, as subsequent mortgagees, were assigns of the equity of redemption; secondly, that the notice of sale given to the mortgagors on the 31st August 1891 had been rescinded, and a fresh notice was therefore required; and, thirdly, that inasmuch as the plaintiffs were willing to redeem the defendants' mortgage, the sale should be restrained. *Held* (1) that notice to the plaintiffs was not necessary. Proper notice had been given to the mortgagors on the 31st August 1891, three days before the plaintiffs had acquired any interest in the equity of redemption. No further notice was required to be given to any person who at that time was not an assign, in order to enable the defendants to sell under that notice. An assign must take things in the state in which he finds them, and cannot claim to alter rights which have accrued before he has any authority to interfere; (2) that the notice of sale of the 31st August 1891 had not been rescinded by the defendants, who were not bound to give a fresh notice before the sale advertised to be held on the 27th April 1893. The mere fact of a long delay taking place between the maturing of the notice of sale and the actual sale does not make a fresh notice necessary; (3) that on the evidence it did not appear that the plaintiffs were able and willing to redeem the defendants'

MORTGAGE—continued.**4. POWER OF SALE—concluded.**

mortgage. The plaintiffs admittedly had not the money in hand, and the Court would not interfere with a mortgagee's right to sell on the mere chance of the plaintiffs being able to make arrangements to pay the amount due at some uncertain time. Where a mortgage-deed which gave the mortgagee a power of sale contained also a proviso that the remedies of the mortgagors, their heirs, administrators, and assigns in respect of any breach of the clauses or provisions (relating to such sale) or of any impropriety or irregularity whatever in any such sale should be in damages,—*Held* on the authority of *Prichard v. Wilson*, 10 Jur., N. S., 330, that the Court would not grant an injunction to restrain the mortgagee from selling the mortgaged property. *MUNOHERJI PURDOONJI v. NOOR MAHOMEDBOH JAJRAJBHOY PIRBHOY*. . . I. L. R., 17 Bom., 711

5. SALE OF MORTGAGED PROPERTY.**(a) RIGHTS OF MORTGAGEES.**

126. — Right of mortgagee—*Remedy on non-satisfaction of claim after sale.*—The right accruing to a lender of money under a mortgage-bond hypothecating land is to have his mortgage-lien on the land declared and the property sold in satisfaction; and if after sale the debt is not satisfied, to proceed against the debtor for the balance. *WEBB v. RINCHIDEN*. . . 14 W. R., 214

LALLA MITTERJEET SINGH v. SCOTT

[17 W. R., 62]

127. — Sale of whole property for portion of debt—*Sale of mortgaged property for instalment of bond—Right to, or lien on, surplus proceeds.*—Where money is lent upon the security of immoveable property of a nature incapable of division, and the mortgagee, on one of the instalments becoming due, has to sell the entire property, he does not thereby lose all lien over the surplus proceeds. It seems to make no difference that the property is capable of division. *RAM KANT CHOWDEY v. BRINDABUN CHUNDER DOSS*. . . 16 W. R., 246

128. — Right to elect property to be sold—*Sale of portion of property pledged.*—Where a plaintiff's bond gives him a separate lien on each and all of several mouzabs pledged as security, he is free to elect for sale whichever of the mouzabs he thinks most likely to satisfy his claim. When a portion of property pledged as security in a bond is sold in satisfaction, there is nothing to prevent the obligee from purchasing such portion. *HOOLAS KOERRE v. SUREHUN*. *SUREHUN v. MAHOMED HUBEBOOLLAH KHAN*. . . 8 W. R., 379

129. — Right to surplus sale-proceeds—*Election to proceed against mortgaged property.*—Where a creditor sued upon a bond and got a decree declaring his debt leviable from certain landed property on which the bond gave him a mortgage lien, as well as for any other property found in possession of the debtor, but having elected to satisfy his mortgage-lien and procured the sale of the

MORTGAGE—continued**5 SALE OF MORTGAGED PROPERTY**
—continued—

intervened, but his claim was disallowed. On the 28th of June 1880 the plaintiff brought the present suit for possession of the talukh. *Held* that the plaintiff was not entitled to possession, but should have brought his suit to enforce the mortgage lien against the defendant. **BIR CHUNDER MANIKYA v MAHOMED AFZAROO** I L R., 10 Cal., 299

141 ——— *Right of purchaser of mortgaged property—Mortgagee purchasing right title and interest of debtor—Plaint*

continued in possession Plaintiff claimed in the

due to
Held that
gave the
against
MUNI REDDI v VENEATA REDDI 3 Mad., 241

142 ——— *First and second mortgages—Sale of mortgaged property in execution of money decree obtained by first mortgagee—Effect on second mortgagee's rights—Pur*

bond was sold and purchased by Z, in November 1872. On the 3rd May 1873 two bonds were executed in

same 10 biswas, and in execution of a decree obtained by B upon this bond, the 10 biswas were sold and

MORTGAGE—continued**5 SALE OF MORTGAGED PROPERTY**
—continued—

purchased by B himself in 1877, and in 1883 were sold by him to D. Subsequently, B and H brought a suit against Z and I, the joint obligors, under the bond of the 3rd May 1872, the heirs of their surety S, a purchaser from those heirs of the property mortgaged in the security-bond, and D, in which they claimed to recover the money due on the bond by sale of the mortgaged property therein and also by the sale

November 1872 therefore left the rights of the parties wholly unaffected *quoad* that instrument. *Held* also that the effect of B's purchase of the 10 biswas in 1877 upon the joint bond of the 3rd May 1872 was as effectually to extinguish the joint incumbrance thereon as if H had been associated with him in buying it, that consequently, when B sold the 10 biswas to D in 1883, they were free of all incumbrance under the joint bond and that he passed to her a clean title which she could assert as a complete answer to the present suit in regard to the 64 biswas. **RUP SINGH v ZAINUABDIN** [I L R., 9 All., 205]

his subsequent charge. **DURG CHURN MUKHO-PADRYA v CHANDRA NATH GUPTA** [4 C. W. N., 541]

sell without paying first mortgage—B made two mortgages dated respectively, the 10th October 1871 and 10th October 1872 of his zamindari property in favour of P. On 27th January 1874 B mortgaged 117 bighas 7 biswas and 10 dhurs of ar and cultivatory land belonging to his zamindari for Rs 700 to the defendant. On 10th September 1877 B made a conditional sale of his zamindari property to the plaintiff for Rs 600 to pay off the two charges

140. *Money-decree—Sale under mortgage-decree—Prior sale under money-decree—Suit for possession.*—On the 21st of April 1864 A mortgaged a certain talukh, and on the 13th of December 1865 the mortgagee obtained a mortgage-decree on his mortgage. On the 5th of April 1867 (in execution of a money-decree obtained against A by a third party on the 20th of September

MORTGAGE—continued.**5 SALE OF MORTGAGED PROPERTY**
—continued

1864) the right, title, and interest of *A* in the talukh

intervened, but his claim was disallowed. On the

against the defendant **BIH CHUNDER MANIKYA r**
MAHOMED AFSAROO I L. R., 10 Cal., 299
141 Right of pur-

continued in possession. Plaintiff claimed in the present suit to recover possession in right of his pur-

gave the second defendant a two-fold remedy, one against the person and the other against the thing. **MUST REDDI r VEKKATA REDDI 3 Mad., 241**

142. ———— *First and second mortgages—Sale of mortgaged property in execution of money-decree obtained by first mortgage—Effect on second mortgagee's rights—Part-*

being paid by them, and mortgaged certain property as security for such payment by him. In December 1872 *Z* gave another bond to *B* hypothecating the same 10 biswas, and in execution of a decree obtained by *B* upon this bond, the 10 biswas were sold and

MORTGAGE—continued**5 SALE OF MORTGAGED PROPERTY**
—continued

purchased by *B* himself in 1877, and in 1883 were sold by him to *D*. Subsequently *B* and *H* brought a suit against *Z* and *I*, the joint obligors, under the bond of the 3rd May 1872, the heirs of their surety *S*, a purchaser from those heirs of the property mortgaged in the security bond, and *D*, in which they claimed to recover the money due on the bond by sale of the property mortgaged therein and also by the sale of the property mortgaged in *S*'s security bond. Held that, inasmuch as *B*'s decree of January 18

November 1872 therefore left the rights of the parties wholly unaffected *quoad* that instrument. Held also that the effect of *B*'s purchase of the 10 biswas in 1877 upon the joint bond of the 3rd May 1872 was as effectually to extinguish the joint incumbrance thereon as if *H* had been associated with him in buying it, that consequently, when *B* sold the 10 biswas to *D* in 1883 they were free of all incumbrance under the joint bond and that he passed to her a clean title which she could assert as a complete answer to the present suit in regard to the 64 biswas. **BIHUP SINGH r ZAINULABDIN**
[I L. R., 9 All., 203]

143 ———— *Right of second mortgages—Right of sale or redemption—Mortgage suit—Parties*—Where a mortgaged property is sold in execution of a mortgage decree at the instance of the first mortgagee, and the second mortgagee, who was no party to the previous suit, brings a suit to enforce his mortgage making the purchaser a party—Held that the property having been sold at the instance of the first mortgagee, the only right which the second mortgagee had was the right to redeem and the plaintiff without redeeming the first mortgage, could not bring the property to sale in satisfaction of his subsequent charge. **DURGA CHURN MUKHOPADHYA r CHANDRA NATH GUPTA**
[4 C. W. N., 541]

144. ———— *Payment by mortgages by conditional sale of prior mortgages—Decree obtained by intermediate simple mortgages for sale—Mortgage by conditional sale fore lost*

the 9th November 1851 defendant obtained a decree on his two bonds of the 27th January 1874 and 10th August 1878, and on his application for execution of

MORTGAGE—continued.

SALE OF MORTGAGED PROPERTY

—continued.

Suit to enforce mortgage-debt on property in the possession of a third party—Properties situate in different districts—Money-decrees—Execution of decree—Code of Civil Procedure (Act VIII of 1859), s. 12.—A, the mortgagee, under a bond, of properties situated in districts B and C, sued in the B Court on his bond, and obtained a decree for the mortgage-money

130.

and interest, with a declaration that the decree would be satisfied by sale of all the mortgaged property. A had not obtained the permission of the B. C. Court under s. 12, Act VIII of 1859, which was necessary to enable him to proceed against the property in the C district. Having attached and sold all properties except the B lands a decree started within the jurisdiction of the B Court. A, under a certificate issued by each Court, obtained an order from the C Court attaching lands included in his decree situate in that district. D, an owner, on the ground that A had purchased the same property in execution of a decree of the C Court against the same property, and that the property was released from the B Court. A sued D and the mortgagee to enforce his attachment against the property in the C district. Held that the B Court had jurisdiction to issue a decree for the amount of the mortgage-money and interest, though it had not power to enforce the decree against the property in the C district; that the only effect of the decree was to reduce the amount of the original debt, which was a valid debt, into a joint mortgage for the mortgage-money and interest; and that, though A could not enforce his attachment against the property in the C district, the decree of the B Court, yet, as that property had been sold to a third person, D, he was at liberty to sue D to satisfy his lien for the mortgage-debt with interest. HOLMES J. LALU. PRASAD PHILLAM SINGH. I. L. R., 5 Cal., 923; 8 C. L. R., 370

(30 W. R., P. C., 10; 2 Moore's I. A., 487

137.

Suit to enforce mortgage-debt on property in the possession of a third party—Properties situate in different districts—Money-decrees—Execution of decree—Code of Civil Procedure (Act VIII of 1859), s. 12.—Where a Mortgagee under a bond, of certain lands and six relatives were entitled to a share of the property, and the six relatives received instead of their share a co. and 1 mortgagee. Held that the holder of a money decree on a mortgage-bond in which the mortgagee and six relatives had jointly pledged their interest in the property for the payment of money could, as against the co., sell the seven shares in execution of his decree; it not appearing that the agreement to accept the commuted all share was irrevocable, or that the agreement had not been entered into with the widow alone. KALLY PRASAD ROY v. SAURABH ALI. 1 C. L. R., 330

138.

Suit to enforce mortgage-debt on property in the possession of a third party—Properties situate in different districts—Money-decrees—Execution of decree—Code of Civil Procedure (Act VIII of 1859), s. 12.—A, the mortgagee, under a bond, of properties situated in districts B and C, sued in the B Court on his bond, and obtained a decree for the mortgage-money

MORTGAGE—continued.

SALE OF MORTGAGED PROPERTY

—continued.

and interest, with a declaration that the decree would be satisfied by sale of all the mortgaged property. A had not obtained the permission of the B. C. Court under s. 12, Act VIII of 1859, which was necessary to enable him to proceed against the property in the C district. Having attached and sold all properties except the B lands a decree started within the jurisdiction of the B Court. A, under a certificate issued by each Court, obtained an order from the C Court attaching lands included in his decree situate in that district. D, an owner, on the ground that A had purchased the same property in execution of a decree of the C Court against the same property, and that the property was released from the B Court. A sued D and the mortgagee to enforce his attachment against the property in the C district. Held that the B Court had jurisdiction to issue a decree for the amount of the mortgage-money and interest, though it had not power to enforce the decree against the property in the C district; that the only effect of the decree was to reduce the amount of the original debt, which was a valid debt, into a joint mortgage for the mortgage-money and interest; and that, though A could not enforce his attachment against the property in the C district, the decree of the B Court, yet, as that property had been sold to a third person, D, he was at liberty to sue D to satisfy his lien for the mortgage-debt with interest. HOLMES J. LALU. PRASAD PHILLAM SINGH. I. L. R., 5 Cal., 923; 8 C. L. R., 370

139.

Mortgaged property, conveyed off, to mortgagee—Attachment and sale of same property under another decree—Suit by mortgagee to recover money advanced on mortgage-bond—Arbitration of mortgagee—Lien.—

In 1874 the plaintiff advanced money to F and Z as the security of a mortgage of certain properties. In 1875 the plaintiff took a conveyance of the properties mortgaged to him, setting off the money due to him under the mortgage against the consideration money. At the time of this conveyance, the same property was under attachment under a decree obtained by another person, and the property was, in execution of this decree, put up for sale, and purchased by one G. In a suit brought by the plaintiff on the mortgage-bond (to recover the money lent, and asking that the properties might be made liable to satisfy the debt) against F, Z, and G it was held that, the conveyance of 1875 being void against G, the plaintiff was entitled to fall back upon the lien created by the mortgage-bond. BISSAN DOSS SINGH v. SHER PRASAD SINGH, 5 C. L. R., 29, followed. GOPAL SANOOL v. GUNDA PERSHAD SANOOL

(I. L. R., 8 Calc., 530

140.

Money-decrees—Sale under mortgage-decrees—Prior sale under money-decrees—Suit for possession.—On the 21st of April 1864 A mortgaged a certain talukh, and on the 13th of December 1865 the mortgagee obtained a mortgage-decrees on his mortgage. On the 5th of April 1867 (in execution of a money-decrees obtained against A by a third party on the 20th of September

MORTGAGE—continued.**5 SALE OF MORTGAGED PROPERTY**

—continued.

mortgagee leaving several heirs—Sale of mortgagee's right by one of such heirs—Suit by purchaser for sale of mortgaged property—Act IV of 1882, s. 67— Upon the death of a sole mortgagee of zamindari property, his estate was divided among his heirs, one of whom, a son, was entitled to fourteen out of thirty two shares. The son executed a sale-deed whereby he conveyed the mortgagee's rights under the mortgage to another person. In a suit for sale brought against the mortgagor by the representative of the purchaser it was found that the plaintiff acquired under the deed of sale, only the rights in the mortgage of the son of the mortgagee, though the deed purported to be an assignment of the whole mortgage. *Held* by the Full Bench that the plaintiff was not entitled, in respect of his own share, to maintain the suit for sale against the whole property, the other parties interested not having been joined that, moreover, he was not entitled to succeed, even in an amended action in claiming the sale of a portion of the property in respect of his own share, and that the suit was therefore not maintainable. *Bishan Dial v. Minn Ram, I L R, 1 All, 207, Bhora Roy v. Abulack Roy, 10 W R, 476, and Bedar Bakht Muhammad Ali v. Khurram Bakht Lahya Ali Khan, 19 W R, 315, referred to. PARSONS v. SARAN & MULLI I L R, 9 All, 88*

148 — *Redemption of prior mortgage by puisne mortgagee—Sale, at his suit, of mortgaged property, on what terms, and with payment of what incumbrances—Upon a claim by a puisne mortgagee to redeem prior incumbrances, and in the alternative, for a decree ordering a sale of the property mortgaged the sale was decreed, with*

of such value as may be necessary to satisfy the prior mortgage. **PATIMA I L R, 18 Cal, 164 (L R, 17 L A., 201)**

149. — *Mortgagee in possession not paying assessment during famine—Payment of arrears of assessment by person registered as occupant who obtains conveyance from mortgagor—Mortgages lying by—Acquiescence—Letoppel—Foreclosure, Suit for—The*

ment. In 1879 the first defendant (his father the mortgagor having died) sold the land to the second defendant, who then paid the arrears of assessment upon it to the Mamlatdar, and took possession. The plaintiffs took no steps to prevent his taking possession, or cultivating the land. In 1880 the plaintiffs brought this suit for foreclosure. They alleged that they had been dispossessed by the second defendant in 1879, and they claimed mesne profits for the years 1883, 1884, and 1885. The Court of first

MORTGAGE—continued.**5 SALE OF MORTGAGED PROPERTY**

—continued.

in good faith and for value—On appeal to the High Court,—Held, restoring the order of the Court of first instance, that the plaintiffs were entitled to a decree. The second defendant only acquired by his Even in, the notice to the der no obligation to do anything, as it was not suggested that they stood by while the second defendant was negotiating for his purchase, or had led him by so doing to suppose that they were not interested in the land, they lived at a distance from the land, and it did not appear that they ever knew of the sale. Nor was there any obligation upon them to move in the matter after the conveyance of the land to the second defendant, provided they did not postpone doing so beyond the period prescribed by the Act of Limitation. **CHINTAMAN RAMCHANDRA v. DAREPPA I L R, 14 Bom., 508**

150. — *Second mortgage of the same property to the same person—Sale in execution of decree on first mortgage—Purchase by mortgagee-decree holder—A decree-holder holding two decrees of different Courts or separate bonds hypothecating the same property, in execution of the first decree purchased the property himself. The surplus of the sale-proceeds was distributed by the Court among other persons who held money-decrees against the same judgment debtor. *Held* that the mortgagee-decree-holder could not afterwards execute the second decree against property of the judgment-debtor not included in the hypothecation bond. *Ahmad Wali v. Bakar Hussain, Weekly Notes, All, 1882, p. 61 Khwajah Bahadur v. Imoman, Weekly Notes, All, 1885, p. 210, and Babu Ravi v. Ramji Sarmajy, I L R, 11 Bom, 112, referred to. BALLAM DAS v. AMAR RAY I L R, 13 All, 537**

151. — *Holder of two mortgages on the same property suing separately on each.—There is nothing in the Code of Civil Procedure or in the Transfer of Property Act to prevent the holder of two independent mortgages over the same property, who is not restrained by any covenant in either of them, from obtaining a decree for sale on each of them in a separate suit. **SIXON v. BHUTO I L R, 20 All, 323***

152. — *Effect of sale of portion of mortgaged property under a decree not on the mortgage—Right of mortgagee to have subsequent sale of mortgaged property taking into account the full value of the property previously*

MORTGAGE—continued.**5. SALE OF MORTGAGED PROPERTY**
—continued.

the decree the property mortgaged to him was advertised for sale on the 20th November 1883. Meanwhile the plaintiff had taken the necessary proceedings to foreclose his conditional sale, and upon the 29th March 1883 the sale was foreclosed. On the 19th November 1883 plaintiff instituted this suit with the object of having it declared that defendant was not entitled to bring to sale the property mortgaged to him. *Held* that by the conditional sale which became absolute upon the 19th March 1883 the plaintiff acquired all the rights that subsisted under the two mortgages of the 10th October 1871 and 10th October 1872, and was entitled to press those securities in his aid as prior incumbrances to that of the defendant, for the purpose of stopping him from bringing the property to sale in execution of his decree before first recouping the plaintiff the amount which the latter found to satisfy and discharge those incumbrances. *Held* further that the only right which the defendant had to bring the property to sale was upon the strength of the decree obtained on the bond of 27th January 1874, for he had no right under the instrument in his favour of the 10th August 1878. The defendant should therefore only be permitted to bring the property to sale under his decree in respect of the mortgage of 27th January 1874, when he had satisfied and discharged the two mortgage-bonds held by the plaintiff of the 10th October 1871 and 10th October 1872.

ZALIM GIR v. RAM CHARAN SINGH

[I. L. R., 10 All., 629]

145. ———— *Suit for sale of mortgaged property without redeeming prior mortgage—Form of decree—Transfer of Property Act (I of 1892), s. 58—General Clauses Consolidation Act (I of 1868), s. 2, cl. 5.*—In a suit on a mortgage by a second mortgagee to which the prior mortgagee was a party, and in which the plaintiff prayed that the amount due to him might be realized by a sale of the mortgaged property, the Courts below dismissed the suit, holding that the plaintiff was not entitled to sell the mortgaged property without redeeming the prior mortgage. *Held* that this decree was erroneous, and that the plaintiff was entitled to an order for sale of the mortgaged property subject to the lien of the prior incumbrancer. The words “immovable property” in s. 58 of the Transfer of Property Act denote, having regard to the definition of “immovable property” in s. 2, cl. 5 of the General Clauses Consolidation Act (I of 1868), not only the property itself as distinguished from any equity of redemption which the mortgagor might possess in the property, but include the rights of the mortgagor in the property mortgaged at the time of the second mortgage, or in other words his equity of redemption in such property. A second mortgagee therefore is, as well as a first mortgagee, a mortgagee of “specific immovable property” under s. 58. The cases of *Venkatachella Kandian v. Panjana Dien*, I. L. R., 4 Mad., 213; *Khub Chand v. Kalian Dass*, I. L. R., 1 All., 240; *Raghunath Prasad v. Jurawan Bai*, I. L. R., 8 All., 105; *Gangadhara v. Siva-*

MORTGAGE—continued.**5. SALE OF MORTGAGED PROPERTY**
—continued.

rama, I. L. R., 8 Mad., 216; and *Umes Chunder Sircar v. Zihur Fatima*, I. L. R., 19 Cal., 164; I. L. R., 17 I. A., 201, referred to and approved as to the right of a second mortgagee to a sale subject to the lien of a prior mortgagee. *KANTI RAM v. KUTUBUDDIN MAHOMED*. I. L. R., 22 Cal., 33.

See BENI MADHUB MOHAPATRA v. SOURENDRA MOHAN TAGORE. I. L. R., 23 Cal., 795.

146. ———— *Civil Procedure Code, ss. 351, 355, and 356—Insolvency—Receiver selling a mortgaged property of insolvent—Purchase at such sale.*—By an order, dated the 8th July 1879, A was declared an insolvent under s. 351 of the Civil Procedure Code (XIV of 1882) and his property vested in the Receiver, who was ordered to convert it into money. Nine fields, which were part of A's property, had been mortgaged to the plaintiff, who was duly cited to appear and prove his debt. The plaintiff, however, failed to appear, and he was consequently omitted from the schedule of A's creditors. The Receiver sold one of the fields, which was purchased by A's undivided son G. At the sale the plaintiff gave notice of his claim as mortgagee. After paying off the debts of the scheduled creditors, the Receiver made over to A the residue of the purchase-money and the eight unsold fields. In 1881 the plaintiff sued A for possession of the mortgaged property, and on appeal obtained a decree. While that suit was pending, G sold to the defendant the field which he had purchased. In execution of his decree, the plaintiff recovered possession of the eight fields, but on attempting to get possession of the ninth field he was obstructed by the defendant, who was in possession, and he consequently brought this suit to recover it. *Held* that the plaintiff was entitled to recover it from the defendant. The only interest the insolvent had in the mortgaged premises was the equity of redemption, and this having vested in the Receiver under s. 364, he under s. 356 was directed to convert it into money. G therefore at the sale only purchased the equity of redemption in the one field; and the defendant, who now stood in G's shoes with notice of the plaintiff's claim, although he might possibly be entitled to redeem the whole nine fields comprised in the mortgage, was bound to deliver possession to the plaintiff (the mortgagee) until that was done. The mortgaged property could not be sold by the Receiver without the consent of the plaintiff (the mortgagee) or paying him off. S. 356 of the Civil Procedure Code (Act XIV of 1882) no doubt contemplates the payment of debts secured by mortgage out of the proceeds of the conversion of the insolvent's property in priority to the general creditors; but this must be taken in connection with s. 354, and must be understood as referring to those cases in which the mortgaged premises have been sold after coming to an understanding with the mortgagee. *SHRIDHAR NARAYAN v. KRISHNAJI VISHOJI*

[I. L. R., 12 Bom., 272]

147. ———— *Right to sale of portion of mortgaged property—Death of sole*

MORTGAGE—continued**5 SALE OF MORTGAGED PROPERTY**

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as a defendant. *G* obtained a decree for redemption and sale. Held per *BAXTER, J.*, that *P* was

was entitled to the whole amount to be paid by *A* for redemption of the first mortgage. *Dip Narain Singh v. Hira Singh I L R. 19 All. 527*, differed from, and *Baldeo Bharti v. Hushiar Singh Weekly Notes All. 1893, p. 45*, distinguished. *WAHID UN NISSA v. GOBARDHAN DAS*

[I. L. R., 22 All. 453]

mortgagee to bring any portion of the mortgaged property to sale is not curtailed by the mortgage, or subsequently to the mortgage selling a portion of the mortgaged property to a third person. *Lala Dilanar Sahas v. Dewan Bolakiram, I L R. 11 Cal. 259*; *Rama Ray v. Yerramilli Subbaragudu I L R. 5 Mad. 38*; and *Ponwari Das v. Muhammad Mashiat, I L R. 9 All. 690* referred to. *BUR KARI DAS v. DALIP SINGH I L R. 17 All. 434*

—Transfer of

part of the amount of the mortgage, purchased at auction, leave of the Court, purchased at auction, amount actually for the holder to the proper of the mortgage. *Singh v. Macnaghten, I L R. 16 Cal. 654*; *Sheonath Dass v. Janki Prasad Singh, I L R. 16 Cal. 132*, and *Gunga Lershad v. Jankar Singh*

MORTGAGE—continued.**5 SALE OF MORTGAGED PROPERTY**

—continued

I L R., 19 Cal. 4, referred to. *MUHAMMAD HUSEN ALI KHAN v. THAKUR DHARAM SINGH*
[I. L. R., 18 All. 31]

159. — Rights of prior and subsequent incumbrancers inter se. Rights of mortgagee purchasing equity of redemption. — Right of sale of mortgaged property. — *A* and *B* jointly mortgaged certain immovable property to *X* by a simple mortgage-deed on the 10th September 1882. They again mortgaged the same property to *Y* on the 23rd February 1884. On the 6th August 1885 *A* mortgaged a portion of the said property to *Y*. On the 12th August 1885 *B* mortgaged a portion of the same property to *Y*. On the 21st August 1885 *A* mortgaged a portion of the same property to *Z*. On the 20th September 1886 *A* and *B* sold to *Y* the property mortgaged to him and with the proceeds of that sale *Y*'s three mortgages were paid off. On the 8th January 1887 *Y* sued *A*, *B*, and *X* for cancellation of the deed of sale of the 20th September 1886, and for sale of the property mortgaged to him under his deed of the 6th August 1885. *Y* did not make *Z* a party to this suit. He did not ask for redemption of *Y*'s mortgages nor for foreclosure of *Z*'s mortgage. Upon these facts it was held by *FOUR C.J.*, *STRAIGHT, TYRRELL* and *KNOX JJ.*, *MAHMOOD J.*, *dissentiente*, (1) That *X*, not having exhibited any intention of foregoing altogether his rights in respect of the mortgages of the 10th September 1882 and the 23rd February 1884, was entitled to keep those securities alive and to use them as a shield against the claim of *Y*, the subsequent mortgagee to the extent of the amount which was due under them on the 20th September 1886. *Gokuldas Gopaldas v. Ramchandra Chaudhary I L R. 10 Cal. 1035*

I L R., 11**I L R.,****Trikam,****I L R.,****Mudali, 7 Mad. 229**; *Sirbadh Das v. Jayarama**Prasad, I L R. 7 All. 563*; *Janki Prasad**Sri Malra Mawlangi, Dacca I L R. 7 All. 577*;*and Gangadhar v. Sirarama, I L R. 6 Mad.**246*, referred to. (2) That *Y* as subsequent mortgagee

could not bring to sale under his mortgage-deed the

property mortgaged to him without first redeeming

the same. *United Housing v. Haffez*

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*Prasad v. Bhagwan Das, I L R. 11 Cal. 24**Muhammad Ibrahim v. Tex Chand Weekly Notes**All. 1882, p. 59*; *Ali Hasan v. Dhurga I L R. 4**All. 513*; *Zalim Gurr v. Ram Charan Singh I L R.**10 All. 629*; and *Umesh Chander Sircar v. Zahar**Fatima, I. J. P., 18 Cal. 164*; *L. J. 17 I. J.**201*, referred to, in addition to the cases cited above.*Raghunath Prasad v. Jorawar Pan, I L R. 9**All. 105* distinguished. *Venkata Chella Kandian**v. Panjandian, I L R. 4 Mad. 213*; *Ganga-**dhar v. Sirarama, I L R. 5 Mad. 216*, and the

MORTGAGE—continued.**5. SALE OF MORTGAGED PROPERTY**
—continued.

brought to sale.—When a mortgagee holding a mortgage over two distinct properties brings one of them to sale in execution of a decree against the mortgagor, not being a decree on his mortgage, and purchases such property himself, the whole mortgage is not necessarily thereby extinguished; but, if the mortgagee subsequently seeks to bring the mortgaged property to sale in execution of a decree obtained on his mortgage, he will have to bring into account the full value of the portion of the mortgaged property purchased by him under his former decree. *Sumera Kuar v. Bhagwant Singh, Weekly Notes, All. (1895), 1, followed. Ahmad Wali v. Bakar Husain, Weekly Notes, All. (1883), 61; Ballam Dass v. Amar Raj, I. L. R., 12 All., 537, referred to. CHUNNA LAL v. ANANDI LAL*

[I. L. R., 19 All., 196]

153. ————— *Mortgage by joint owner—Mortgagee becoming purchaser of part of mortgaged property—Right of redemption of part of mortgaged property—Apportionment of mortgage-debt—Right of mortgagee to keep security entire—Right of purchaser of mortgagee's interest to sue for partition—Joint possession.*—When a mortgagee acquires by purchase the interest of some of the mortgagors, he acquires only a right to sue for partition after the redemption of the entire security has been effected. He must first surrender or restore the mortgage security and then urge what title he may have acquired by the purchase. The general rule is that a mortgagee has a right to insist that his security shall not be split up, but in the following cases there is no objection to do so and to rateably distribute the mortgage-debt:—(a) When the mortgagee does not insist on keeping the security entire. (b) When the original contract itself recites that the mortgagors join together in mortgaging their separate shares. (c) When the mortgagee has himself split up the security, e.g., when he buys a portion of the mortgaged estate. In this case he is estopped from seeking to throw the whole burden on that part of the property still mortgaged with him. In 1872 the plaintiffs' father (K) and brother (B) mortgaged seven lots of land with possession to the father of defendants Nos. 1, 2, and 3. Four of these lots were subsequently sold to defendants Nos. 4 to 8, with the consent of the mortgagees, who continued in possession of the remaining three lots. In 1878, in execution of a decree, B's interest in these latter three lots was sold, and was purchased by defendants Nos. 1, 2, and 3. In 1889 the defendants Nos. 1, 2, and 3 sold these three lots to defendant No. 9. In 1881 the plaintiffs (sons and brothers of the original mortgagors) sued to redeem all the lands comprised in the mortgage of 1872. The first Court as to the first four lots held that defendants Nos. 4 to 8 had been in adverse possession of the first four lots for more than twelve years, and that as to them the suit was barred. As to the remaining three lots, it passed a decree for redemption of the plaintiffs' three-fourths share of the lands, and directed that on payment within six months by them of Rs 500 to defendant No. 9 (who stood in

MORTGAGE—continued.**5. SALE OF MORTGAGED PROPERTY**
—continued.

the place of defendants Nos. 1, 2, and 3), they should be put in possession of the lands jointly with defendant No. 9. In appeal the decree was confirmed as to the first four lots, but as to the remaining three lots, the Judge found that the mortgage debt had been paid, and that a sum of Rs 348-5-0 was due from the mortgagees in possession (defendants Nos. 1, 2, 3, and 9) to the plaintiff. He therefore ordered payment of three-fourths of this amount by defendant No. 9 to plaintiffs, and directed that they should be put in possession of their three-fourths share of the lands jointly with defendant No. 9. On appeal to the High Court as to the right to redeem the said three lots,—*Held* that the plaintiffs were entitled to redeem the whole of the said three lots which had been admittedly mortgaged in 1872 and not merely a three-fourths share thereof, and were also entitled to the whole of the surplus sum of Rs 348 found due by the mortgagees in possession. *Held* also that defendant No. 9, who had acquired from the mortgagees (defendants Nos. 1, 2, and 3) the equity of redemption in part of the mortgaged property, was not entitled to possession of his share jointly with the plaintiffs. The mortgaged property should first be restored to the plaintiffs, and then defendant No. 9 might bring a separate suit for partition. *NARAYAN v. GANPAT. GANPAT v. NARAYAN I. L. R., 21 Bom., 618.*

154. ————— *Prior and subsequent mortgages—Price to be paid by a subsequent mortgagee redeeming after the mortgaged property has been brought to sale and purchased by the prior mortgagee—Transfer of Property Act (IV of 1882), s. 74, 75, and 85.*—A subsequent mortgagee is not entitled to redeem the prior mortgage by simply paying the price for which the prior mortgagee may have purchased the mortgaged property at an auction-sale held in execution of a decree obtained by him without joining the subsequent mortgagee as a party; but such subsequent mortgagee must, if he wishes to redeem, pay to the prior mortgagee the full amount due on his mortgage. *Gunga Pershad Sahu v. Land Mortgage Bank, I. L. R., 21 Cal., 366, and Dadoba Arjunji v. Damodar Raghunath, I. L. R., 16 Bom., 486, referred to. Baldeo Bharti v. Hushiar Singh, Weekly Notes, All. (1895), 46, distinguished. DIP NARAYAN SINGH v. HIRA SINGH [I. L. R., 19 All., 527]*

155. ————— *Prior and subsequent incumbrancers, Rights of, inter se—Transfer of Property Act (IV of 1882), s. 85—Sale in execution of decree obtained by first mortgagee in a suit to which the second mortgagee was not a party—Rights of auction-purchaser and mortgagor as regards the second mortgagee.*—A prior mortgagee, K, obtained a decree in a suit upon his mortgage, to which suit a puisne mortgagee, G, was not made a party, and subsequently one B attached the decree, and, having put up the property for sale, purchased it himself. G, the puisne mortgagee, having brought a suit for redemption of K's mortgage and sale of the property, K sold his rights to B, who was thereupon added.

MORTGAGE—continued.**5. SALE OF MORTGAGED PROPERTY**
—continued.

and after obtaining permission to bid at the sale held in execution of such decree has become the purchaser, does not stand in a fiduciary position towards his mortgagor. *Hari v. Tara Prasanna Mulraj, I L. R., 11 Cal., 718*, distinguished. A mortgagee in such a position therefore is at liberty to take out further execution for any balance of the amount decreed that may be left after deducting the price for which the mortgaged property was sold, and is not bound to credit the judgment-debtor with the real value of the property to be ascertained by the Court. The permission to a mortgagee to bid should be very cautiously granted, and only when it is found after proceeding with a sale that no purchaser at an adequate price can be found, and even then only after some enquiry as to whether the sale proclamation has been duly published. *SHESATH DOSA v. JAWI PRASAD SINGH* . . . I. L. R., 18 Cal., 132

185. — — — — — *Possession of mortgagee who has purchased the mortgaged property after obtaining leave to bid.*—A decree-holder (a mortgagee) who has, after obtaining leave to bid at a sale, purchased the mortgaged premises is in the same position as an independent purchaser and is only bound to give credit to the mortgagor for the actual amount of his bid. *Mahabir Pershad Singh v. Macnaghten, I. L. R., 16 Cal., 652*, followed. *GUNGA PERSHAD v. JAWAHIR SINGH*
[I. L. R., 19 Cal., 4

(b) MONEY-DECREES ON MORTGAGES.

[3 B. L. R., Ap., 140

187. — — — — — *Right of suit against purchaser of moveable property on which there is a lien.*—A suit will not lie against the purchaser of property subject to a lien to recover from him personally the amount of the lien, but the lien is not lost by the sale, and a suit may be brought against the purchaser with the object of obtaining a decree for the realization of the lien by the sale of the hypothecated property. *JOGESWATH v. ILAHI* . . . 3 N. W., 207

188. — — — — — *Mortgage-bond with covenant to repay money in default, agreement to put mortgagee in possession of land.*—Where a mortgage-bond contained an agreement to repay the money with interest by a certain day, and proceeded thus: "If I, the mortgagor, fail to pay the amount, then I will put you in possession of the land and you may enjoy it, and when I have the

MORTGAGE—continued.**5. SALE OF MORTGAGED PROPERTY**
—continued.

means I will redeem the land and pay the debt with interest, and take back the bond,"—*Held* that on the mortgagor's default the mortgagee might sue for the money, and that he was not bound to accept the land and forego his right of action. *ANJAYAMI v. NARBANAIYAN* . . . I Mad., 114

189. — — — — — *Pledge of mortgage-bond—Fraudulent sale by mortgagor—Suit to enforce mortgage against bond fide purchaser.*—A prior encumbrancer will not be postponed to a subse-

gave the bond to A, who was his brother-in-law A, representing to D that the mortgage was redeemed, sold the land to him, giving him the land as a title-deed. In a suit by B against D to recover the mortgage amount by sale of the land,—*Held* that D, even although a bond fide purchaser, could not resist the claim. *MUTHA v. SAMI*
[I. L. R., 8 Mad., 200

170. — — — — — *Sale under money-decree—Lien on property mortgaged—Purchase by mortgagee.*—When a creditor who holds a bond whereby property is mortgaged elects to take a money-decree, and in execution thereof brings the mortgaged property to sale, he by that sale transfers to the purchaser the benefit of his own lien and also the right of redemption of his debtor. When therefore the decree holder is himself the auction-purchaser, he obtains the right to have his lien on the mortgaged land satisfied. *ARUTH BOAR v. JOGESWATH MOHAPATTUN* . . . 23 W. R., 480

171. — — — — — *Suit on mortgage-bond—Transfer of lien—Third parties.*—Where a mortgagee sues on his bond and takes a money-decree, in execution of which he attaches and

GOURDHON LALL MOHAPATTUN . . . 24 W. R., 210

172. — — — — — *Lien on mortgaged property—Advance to save property from sale.*—A mere money decree upon a mortgage-bond gives the judgment-creditor the power of selling the mortgaged property with the lien, in the same way as a decree with express power to sell the mortgaged property. *MONUN BACCHI v. GHISH CHUNDER BRADOPADHYA* . . . 1 C. L. R., 153

MUNSHI KORN v. NOWRATTUN KORN
[8 C. L. R., 423

173. — — — — — *Fact of lien.*—The fact that a money-decree has been obtained on a bond by which property has been mortgaged does not destroy the lien on that property. It is open to a plaintiff to establish his right on the

MORTGAGE—continued.**5. SALE OF MORTGAGED PROPERTY**

—continued.

judgments of MAHMOOD, J., in *Sirdak Rai v. Ragnunath Prasad*, I. L. R., 7 All., 668, and in *Janki Prasad v. Sri Matra Mathangul Debhi*, I. L. R., 7 All., 677, dissented from. MAHMOOD, J., *contra*.—Inasmuch as a mortgage cannot bring the mortgaged property to sale without the intervention of a Court, a private purchase by the mortgagee of the rights remaining to the mortgagor in such property, though it may be valid as against the mortgagor, can have no effect in defeating the rights of puine and mesne incumbrancers. Moreover, where a second mortgage to a third party intervenes between the mortgage to and the purchase by the prior mortgagee of the rights of the mortgagor, such intermediate mortgage prevents the merger of the rights of the prior mortgagor as such with those which he might acquire by his purchase. The right of sale is an essential incident of a simple mortgage, and inheres as well in puine and mesne as in prior mortgages, subject to the rights of the prior mortgagees. The puine or mesne mortgage is not bound by the terms of the prior mortgage, or mortgagee, but is entitled to bring the property mortgaged to sale, subject to such prior mortgage or mortgages. *Mata Din Kasodhan v. Kazim Hussain*, I. L. R., 13 All., 432.

180. ——— *Prior and subsequent mortgagees—Rights of subsequent mortgagees where prior mortgage is usufructuary, and time has not arrived for redemption—Form of decree.*—*Held* that, where there exists a prior usufructuary mortgage, a subsequent mortgagee of the same property cannot bring the mortgaged property to sale in virtue of his incumbrance until such time as the usufructuary mortgage becomes capable of redemption. *Mata Din Kasodhan v. Kazim Hussain*, I. L. R., 13 All., 432, explained and followed. *Akhra Panchaiti v. Sura Lal*

[I. L. R., 18 All., 83]

181. ——— *Transfer of Property Act (IV of 1882), s. 101—Erlinguishment of mortgage—Merger—Third mortgagee paying off first mortgage—Priority of charges.*—Certain land was mortgaged in 1876 to A, and on 10th February 1877 to B, and two days afterwards to C, the last-mentioned mortgage was effected to satisfy a decree obtained by A on his mortgage. In February 1882 C obtained a decree on his mortgage: this decree was discharged by the sale of the land to D, who borrowed part of the purchase-money from the plaintiff, to whom he mortgaged it on the day of the sale. B subsequently obtained against D and the mortgagor's representative a decree on his mortgage, which comprised a declaration that the sale of 1882 was subject to his lien and brought the property to sale and became the purchaser in execution. The plaintiff now sued B and D on his mortgage. *Held* that the plaintiff's mortgage was entitled to priority over the mortgage of 10th February 1877 to the extent to which the loan secured thereby had gone to dis-

MORTGAGE—continued.**5. SALE OF MORTGAGED PROPERTY**

—continued.

charge the mortgage of 1876. *SEETHARAMA v. VENKATKRISHNAKA*, I. L. R., 18 Mad., 94

182.

Covenant that mortgagee be entitled to enter—Entry, Right of—Mortgage-deed in English form.—B executed a mortgage-deed in the English form in favour of the L. Bank, containing amongst other covenants one providing that, upon default, the mortgagee would be entitled to enter into possession of the mortgaged properties. B died leaving a widow, a daughter and a sister S, his heirs. According to Mahomedan law, S was entitled to a six-annas share of the mortgaged properties. On the 9th of May 1872, after the mortgage-money became due, the L. Bank brought a suit, and, on the 13th of July 1872, obtained a decree by consent. The existence or right of S to a share in the properties was not known to the Bank, and she was not made a party to that suit. The Bank, in execution of their decree, caused the mortgaged properties to be sold, and themselves purchased some of them. The sale-proceeds did not satisfy the entire claim. On the 1st of December 1875 S sold her share of six annas in the properties to R. In a suit by R against the purchaser of two of the mortgaged properties at the aforesaid sale it was held that the share of S in the estate of B did not pass to the purchaser, though the Bank purported to have brought the whole sixteen annas in the properties to sale. R then brought this suit for the recovery of possession of the six-annas share of the properties, purchased at the sale by the Bank themselves, and which was now in their possession. *Held* that under the covenant in the mortgage-deed above referred to, the Bank were entitled to remain in possession as mortgagees until the proportion of the debt which might legitimately be imposed upon the six-annas share of the properties in their hands was paid. *LUTCHMIEET SINGH BAHADUR v. LAND MORTGAGE BANK OF INDIA*, I. L. R., 14 Calc., 484

183. ——— *Purchase of mortgaged property by mortgagee at judicial sale on leave obtained to bid.*—Where mortgagees executed their decree on the mortgage, and having obtained leave to bid at the judicial sale purchased the property,—*Held* that they could not be held to have purchased as trustees for the mortgagors, the leave granted to bid having put an end to the disability of the mortgagees to purchase for themselves, putting them in the same position as any independent purchasers. *MAHABIR PERSHAD SINGH v. MACNAGHTEN*, I. L. R., 16 Calc., 682 [I. L. R., 16 I. A., 107]

DAKSHINA MOHAN ROY v. BASUMATI DEBI, [4 C. W. N., 474]

184. ——— *Civil Procedure Code, 1882, s. 294—Decree-holder, Purchase by—Satisfaction pro tanto—Mortgagee not trustee for mortgagor in sale-proceeds—Leave to bid at sale in execution when granted—Permission of the Court to decree-holder to buy—Practice.*—A mortgagee who has obtained a mortgage-decree,

MORTGAGE—continued**5 SALE OF MORTGAGED PROPERTY**
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RAJ CRUNDER SHANA & HUE MOHUN ROY
[22 W. R., 98]

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[I. L. R., 1 All., 448]

181

Sale of property

for money-decree — *Lien for prior hypothecation* — The fact that property is sold under a decree obtained by a plaintiff in respect of a debt due to him does not of itself prevent such plaintiff from insisting upon the lien to which he is entitled under a prior hypothecation to him for another debt of the same property. A decree obtained under the summary procedure prescribed by the Registration Act can be for money only, and not for the enforcement of a lien. JAGGON NATH & KOMUL SINGH

[3 N. W., 123]

182

as the parties to the suit are concerned, whether the decree be made under s. 53 or in a regular suit. Where the property mortgaged has passed into the hands of third parties, there is nothing in the fact that the mortgagee had obtained a decree on the bond to prevent him from bringing a separate suit against the transferees. IMAM MONTAZZODDEEN MAHOMED & RAJCOOMAR DAS HANACHUNDER GHOSH & DINOHUNDHO BOSE

[14 B. L. R., F. B., 408; 23 W. R., 187]

183

Sale of hypothecation

s. 53, and obtained decree. In 1868 K. L. arranged with R. N. to be paid by monthly instalments at interest higher than was allowed by the decree. In 1869 he put up the property to sale in execution of his decree, and it was purchased by the plaintiff. Shortly after it was again put up to sale in execution of the defendant's decree and purchased by the defendant, who got into possession. In a suit to recover possession, — *Held* that although K. L. in his execution proceedings referred to his kisthanah as well as to his decree and irregularly included in the amount to be levied what was not given by the decree, yet as the proceeds did not cover the decree the

MORTGAGE—continued**5 SALE OF MORTGAGED PROPERTY**
—continued

proceedings could not be held to be void, nor the plaintiff's purchase annulled. *Held* that what passed to the plaintiff was the property hypothecated of which he became owner and *prima facie* entitled to possession, having purchased at the instance of a first incumbrancer, and that defendant's lien could not protect him in possession. KANESAR PRASAD & DOWLAT RAM

19 W. R., 83

184

Sale in execution

of decree on mortgage bond — *Purchaser, Right of* — Nothing passes to the actual purchaser at a sale in execution of a money-decree but the right, title, and interest of the judgment debtor at the time of the sale. Where there is a decree given under

bond to defeat a second mortgage. AKHAR RAM & NARAY KISHORE

I. L. R., 1 All., 238

185

Mortgagee's lien

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the
lay
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1879 against C and D and the representatives of D (D having meanwhile died and his representatives not joining in the suit), to enforce his lien against the mortgaged property in the hands of C and D and to recover the share of the mortgage debt still due to himself alone. *Held* that A did not acquire a better right to proceed against the property by reason of its having come into the hands of C and D, nor did C and D take subject to a greater burden than the mortgagor himself, and that as A had allowed his decree against the mortgagee or to be barred by limitation, he had lost all right to proceed against the property by execution were it in the hands of the mortgagor and consequently he could not be allowed to proceed against it by suit merely because it was in the hands of third parties. IMAM MONTAZZODDEEN MAHOMED & RAJCOOMAR DAS, 11 B. L. R., 409; 23 W. R., 187, and JOMMENJY MULLICK & DORAMONEY DASSEE, I. L. R., 7 Cal., 714; 9 C. L. R., 353, referred to. CALLY NATH BERNAPADUR & KOONJO BHARAT SHANA. I. L. R., 9 Cal., 631

186

Sale in execution

of decree — *Purchaser, Right of* — *Condition against alienation* — Where the holder of a simple mortgage-bond obtained only a money-decree on the bond, in execution of which the property hypothecated in the bond was brought to sale and was purchased by him, he could not resist a claim to foreclose a second mortgage of the property created prior to the

MORTGAGE—continued.**5. SALE OF MORTGAGED PROPERTY***—continued.*

land as well as on the decree. **HAYOON ABRA BE-
GEM v. JAWARCONISHA SATOODA KHANDAN**

[**I. L. R.**, 3 Cal., 29

171.

Lien—Priority.

—The plaintiff had lent money to a Court Amra, who mortgaged as security for the repayment of the amount, certain fees due to him then in deposit, and certain fees which might hereafter be deposited on his account. Those fees were subsequently attached by the defendant, who had obtained a decree for rent against the Amra. After that, the plaintiff obtained a simple money-decree against the Amra, and applied, in execution of his decree, to have the fees paid out to him, but his application was refused on the ground of the defendant's attachment. In a suit to recover the sums in deposit, and to have it declared that the plaintiff's lien on them was prior to that of the defendant. —*Held* that the plaintiff's mortgage gave him priority, and that he was not barred from bringing the present suit by his having already sued to recover the amount and obtained a mere money-decree. **LATA TILAKDHAR LAL v. PURLONG** **3 B. L. R.**, A. C., 230

**S. C. LALLA TEELUCKDAS LAL v. COURT
OF WARDEN** **11 W. R.**, 149

175.

Lien on mort-

gaged property—Form of decree.—A mortgagee by way of simple mortgage cannot assert his lien on the property mortgaged, as against a subsequent mortgagee by way of conditional sale who had foreclosed, if the decree passed in favour of the former on his mortgage bond does not provide for its satisfaction from the sale of the mortgaged property. **RAM CHANDRU MISHR v. KALLY PRO-ONNO SINGH** [**2 May**, 825

176.

Sale in execu-

tion of decree on mortgage-bond—Lien on mort-
gaged property.—In a suit for possession of property which plaintiff's vendor (K) had purchased from one A, R K, the defendant in possession, claimed to be entitled to retain possession as purchaser under a sale in execution of a decree against A, which had been obtained on bonds which pledged the property, although the mortgage was not declared in the decree. *Held* that, if R K could prove that by the bonds in question this property was pledged as security for the debts covered by them, he would be entitled to remain in possession. **RAM KANT ROY v. RAJ KISHORE DEB** **24 W. R.**, 64

177.

—*Effect of taking money-*
decree on mortgage-bond—Execution of decree
—Subsequent purchaser.—When a person to whom property is pledged for a debt obtains a simple money-decree against his debtor in respect of the debt, he cannot execute that decree against the property pledged where it is in the possession of a subsequent bond fide purchaser. **GUPINATH SINGH v. SHEO SAIHAI SINGH**

[**B. L. R.**, Sup. Vol., 72: 1 **W. R.**, 315

MORTGAGE—continued.**5. SALE OF MORTGAGED PROPERTY***—continued.*

Distinguished in **BECKWITH v. UMESH CHUNDER ROY** **3 W. R.**, 110

Followed in **BRUWAN DOSS v. NUDER BUKSH** [**7 W. R.**, 31

GOORIE SINGH v. FUZZ HOSSAIN [**15 W. R.**, 313

RADHA GOBIND SURMAH v. UMBER ALI [**15 W. R.**, 27

ABDUL ALI alias AGA MIRZA v. AMEERHOONISSA [**11 W. R.**, 223

ACHUMBIT THAKOOR v. CHOONER LALL CHOW-
DHURY **10 W. R.**, 27

FRENCH v. BARANASHEE BANERJEE **8 W. R.**, 29

BISDABUS CHUNDER SHAHA v. JANER BEEDER [**8 W. R.**, 312

RAMNATH RAM v. DEEN DYAL RAM [**W. R.**, 1864, 311

178.

Right of lien—

Purchaser.—A mortgagee who obtains a simple money-decree upon a bond by which property is mortgaged to him as a collateral security does not retain his lien on the property mortgaged after it has passed into the hands of third persons. **SAWRUTH SING v. BHUESUCK SAHOO**

[**14 B. L. R.**, 422 note; **12 W. R.**, 522

GOLUCK MONER DEBIA v. RAM SOONDER CHUCK-
ERBUTTY **9 W. R.**, 83

RADHA GOBIND SURMAH v. UMBER ALI [**15 W. R.**, 27

179.

Effect of assign-

ment of judgment-debt—Sale on property on which there is a lien—Civil Procedure Code, 1859, s. 270.—A simple decree for money upon a bond by which immovable property is mortgaged carries with it a lien upon the property mortgaged, and that lien continues as an incident to the debt when it passes from a contract-debt into a judgment-debt, and it continues when such judgment-debt is subsequently assigned to a purchaser. An attachment under a money-decree on a mortgage-bond and a mortgage-lien cannot co-exist separately in the property hypothecated, and such an attachment must be treated when existing as an attachment for enforcing the lien. And if property subject to such lien is sold in execution of a decree while it is under attachment under the decree upon the mortgage-bond, the lien existing upon the property is transferred from the property to the purchase-money, and thereupon the property becomes thenceforth discharged from the lien. If after the rejection of a claim preferred by the mortgagee, or person claiming the lien, no regular suit is brought under s. 270 of Act VIII of 1859 to enforce the lien, that lien is lost, and the decree becomes thenceforth a mere money-decree discharged from any incidental lien. **NADIR HOSSAIN v. PEAROO THOVILDARINEE**

[**14 B. L. R.**, 425 note; **19 W. R.**, 255

MORTGAGE—continued.**5. SALE OF MORTGAGED PROPERTY**
—continued.

obstructed by N, a person who had already purchased it at an auction sale in execution of a money decree obtained against A by another creditor. The plaintiff, having before the date of his decree, obtained a

obstruction of the execution of a money-decree against D, the former successful purchaser and obstructor. Held that,

right acquired by the purchaser at a sale does not depend on the form of the decree on which the mortgagee has proceeded to satisfy his judgment-debt. What the mortgagee really seeks when he proceeds to

1 Cal., 337, and Ramu Nairan v Supparaya Mudali, 7 Mai., 229, followed. Khubchand v Kallindas, 1 L. R., 1 All., 240, dissented from NARSIDAS JIRAM v. JOGLEKAR [L. R., 4 Bom., 57

183. — Money-decree—
Difference between execution on money decree on a mortgage and one not on mortgage—Right of purchaser. A mortgagee is entitled to a personal

transfers to the purchaser in the same manner as if the sale had been made under an express direction in the decree. Even though the officer of the Court should mention merely the right, title, and interest of the mortgagee as what is sold, the interest of the mortgagee who has promoted the sale passes by way of estoppel, although the mortgagee executes no conveyance to the purchaser. The only difference in execution between a money-decree upon a mortgage

MORTGAGE—continued.**5 SALE OF MORTGAGED PROPERTY**
—continued.

and one not upon a mortgage is that where the mortgaged lands are attached under the former, their sale is deferred until six months or some other reasonable period expires, in order to give the mortgagor an opportunity to redeem, which he would have in a suit for foreclosure or redemption. HARI L. LUCKHMAN [L. R., 5 Bom., 814

over it, because it is for the very purpose of securing those rights that the sale is made. And if, instead

lien on the property. Esmat Montazooddeen Ma-

Deb., 21 W. R. 94 Khub Chand v Kallindas, 1 L. R., 1 All., 240, and Dossmoney Doss v. Jomnengoy Mullick, 1 L. R., 3 Cal., 353, discussed and explained. RAMANATH DAS v. BOLRAM PHOOKUN [L. R., 7 Cal., 677. 9 C. L. R., 233

195 — Mortgage-decree

Joy Mullick, 1 L. R., 3 Cal., 353, overruled. JOY MEJOR MULLICK v. DOSSMONEY DOSSER [L. R., 7 Cal., 714. 9 C. L. R., 353

186. — Subsequent suit
by mortgagee to enforce his lien on the property mortgaged.—The plaintiff, a mortgagee of certain

then brought a suit against A and the representatives of his debtor to have his lien declared and delisted. Held that, notwithstanding the plaintiff's previous money decree, he was still entitled to enforce his

(6019)

MORTGAGE—continued.

SALE OF MORTGAGED PROPERTY
—continued.

ment and sale in execution of his decree. The Full Bench of the Calcutta High Court in *Montazooddeen Mahomed v. Rajcoomar Dass*, 3 L. R., 408, and the decision in *Ramu Naikan Subbaraya Mudali, 7 Mad., 229*, dissented from. *Held* further that the holder of the money-decree in case could not avail himself of a condition against redemption contained in his bond to resist the foreclosure. *Rajah Ram v. Baines Madho, 5 N. W., impugned. KHUB CHAND v. KALIAN DAS* [I. L. R., 1 All., 240]

187. — *Lease granted to obligor, Avoidance of—Sale in execution of decree.*—An obligee under a bond giving him a charge upon land who sues for and obtains only a money-decree, under which he himself purchases the land, the sale proceeds being sufficient to discharge the debt, cannot fall back on the collateral security for a debt which no longer exists. *Semle*—That even if the sale proceeds were not sufficient to discharge the debt, the obligee could not, according to the principle laid down in *Khub Chand v. Kalian Das, I. L. R., 1 All., 240*, avail himself of his collateral security to avoid a lease granted by the obligor after the date of the bond. *BULWANT SINGH v. GOKARAN PRASAD* [I. L. R., 1 All., 433]

188. — *Usufructuary mortgage—Execution of decree on money-bond—Lien.*—A party who had obtained a farming lease for a period of years on the understanding that he was to repay himself the amount of a loan made to the lessor out of the surplus usufruct of the estate, not being satisfied with his security, sued on the bond executed by the lessor and obtained a decree, by executing which he realized from time to time nearly the whole sum due. *Held* that the decree substituted another means of recovery for the one previously given, and if he chose to recover the greater part of his due under a decree which, in the place of his farming lease, gave him power to sell the property leased to him, he could not retain his former status as well. *ISSUR CHUNDER SEIN v. KENARAM GHOSH* [4 W. R., 463]

189. — *Money-decree, Sale under—Purchaser of property subject to mortgage.*—Plaintiff and defendant No. 5 had mortgages over the same property, the mortgage of the latter being prior to that of the former. Defendant sued for the money covered by the kistbundi, and obtained a money-decree, in execution of which the rights and interests of the mortgagor were purchased, after notice of plaintiff's lien by defendant No. 5, who entered into possession. *Held* that under the circumstances the mortgagor's rights and interests sold as above amounted only to the equity of redemption, and the sale did not extinguish plaintiff's right under the subsequent mortgage; and that the purchaser could be entitled to retain possession only in case of his paying off plaintiff's lien. *DEO CHAND SAHOO v. TEELUCK SINGH* [14 W. R., 238]

MORTGAGE—continued.

5. SALE OF MORTGAGED PROPERTY
—continued.

190. — *Suit for possession by purchaser at sale in execution of decree on a mortgage, against mukurari tenure-holder of later date.*—At a sale in 1871, in execution of a decree upon a mortgage, dated 3rd May 1867, A purchased the mortgaged lands, the existence of a mukurari granted in 1868 having been notified at the sale. *Held* that a suit by A against the mukuraris for possession would not lie, the existence of the mortgage being no bar to the creation of a subsequent incumbrance carrying with it the right of possession. *Emam Montazooddeen v. Raj Coomur Dass, 14 B. L. R., 408; 23 W. R., 187; Gopee Bundhoo Shantra Mohapatter v. Bheemuck Sahoo, 12 W. R., 522; Sarawan Hossein v. Shahazadah Golam Mahomed, 9 W. R., 171; Gopeenoth Singh v. Sheo Sahoy Singh, 1 W. R., 315, discussed. KOKIL SINGH v. DULI CHUND. MITTERJEET SINGH v. DULI CHUND* 5 C. L. R., 243

191. — *Execution of decree on mortgage—Sale in execution of mortgage-decree.*—On the 9th June 1868, A, the mukurari of a certain mouzah, mortgaged 8 annas of the mouzah to B, and also gave him a dar-mukurari lease of the remaining 2 annas. On the 26th November 1870 A mortgaged the whole 10 annas to C, and on the 14th December 1875 sold a 1-anna share of the mukurari to the predecessor in title of the appellants. On the 11th June 1877 B obtained a decree on his mortgage which he assigned to the plaintiff, who in execution of the decree sold 6 annas of the mortgaged property and himself became the purchaser. On the 2nd August 1877 C obtained a decree upon his mortgage, and in execution thereof he sold the remaining 4 annas of the mukurari to the plaintiff. Two annas of the 10 annas share of the mukurari mortgaged to C being subject to the dar-mukurari lease to B, the plaintiff brought a suit for the rent of the remaining 8 annas, and in that suit the appellants, who were no parties to any of the previous suits, intervened, on the ground that the plaintiff was not entitled to the 1-anna share which had been purchased by their predecessor in title on the 14th December 1875. *Held*, reversing the decision of the Court below, that the plaintiff was not entitled as against the appellants to the 1-anna share, the subject of the sale of the 4th December 1875; but that, if the lower Court on remand should find the plaintiff to be in possession of such share, then a decree for rent should be passed in the plaintiff's favour, leaving the appellants to take any steps which they might be advised. *Phool Chand v. Kalian Dass, I. L. R., 1 All., 240, disapproved of. Haran Chunder Ghose v. Dinobuntloo Bose, 14 B. L. R., 408; 23 W. R., 187; and Narsidas Jitram v. Joglekar, I. L. R., 4 Bom., 57, followed. MADHU SINGH v. ACHRAJ SINGH* [9 C. L. R., 389]

192. — *Money-decree, Effect of sale by mortgagee of mortgaged property under—Assignment—Purchaser at sale in execution of decree, Right of—Lien.*—A mortgaged property

MORTGAGE—continued**5 SALE OF MORTGAGED PROPERTY***—continued*

1864, and a decree for the sum due was made in October 1871 directing that if the sum due was not paid within two months, the mortgaged property should be sold. In March 1872 the property was sold in execution of the above mentioned decree and bought by the plaintiff, who was duly put into possession. In 1871 a suit was brought against the defendant on the mortgage of 1869 by the defendant.

the defendant was put into possession. The defendant was then brought by the plaintiff, the first mortgagee and purchaser to eject the defendant the second mortgagee and purchaser and the lower Appellate Court making a decree in favour of the plaintiff, the defendant filed the second appeal. Held that the plaintiff having bought the rights and interests of the defendant in the mortgage held prior to the sale

the mortgage was not affected by the sale to the plaintiff, though the defendant could not be given to that right in the present suit. *VENKATABASAMNAH v. RAMIAH*

[I L R, 2 Mad., 108]

the decrees were partially satisfied and the balance was not recovered by limitation. In 1884 the plaintiff brought a suit to recover the balance due by enforcement of the mortgage security against the purchasers of the mortgaged property. Held that, when the plaintiff obtained his decrees for rent the mortgage security did not merge in the judgment debts, nor did he lose his remedy on it; that the two rights were distinct, and the right of action on the mortgage security was not lost because the execution of the decrees for rent was time-barred, the only effect of which was that the debt was not recoverable in execution, but the debt existed nevertheless so far as to enable the amount secured by mortgage to be recovered by suit in the Civil Court, so long as such suit was not barred by limitation. *Emam Shumaraooddeen Mahomed v. Rajeswarar Dass*, 14 B L R 404, referred to. Held also that the amount which the plaintiff could recover by enforcement of the mortgage security was limited to

3,000 CHUNNI LAL v. BANARAT SINGH

[I L R, 9 All., 23]

MORTGAGE—continued**5 SALE OF MORTGAGED PROPERTY***—continued***(c) PURCHASERS.**

201. Effect of sale of mortgaged property—*Rights of purchaser*—By a sale of mortgaged property in execution of a decree obtained by a mortgagee against the mortgagor upon the mortgage the interest both of the mortgagor and mortgagee passes to the purchaser. But by a sale of mortgaged property in execution of a money decree obtained by the mortgagee against the mortgagor, the interest of the defendant (mortgagor) alone passes to the purchaser. *MAGAYAL v. SHAKRA GIRDHAR*

[I L R, 23 Bom., 845]

See KHEVRAJ JESUR v. LINGAYA

[I L R, 5 Bom., 2]

SHESHGIRI SHAMBAG v. SALVADAR AT

[I L R, 5 Bom., 5]

and SHYAMA CHURN BHATTACHARJEE v. AYANDA CHANDRA DAS

3 C W N, 323

202. *Discharge of encumbrance by intending purchaser*—Bond filed—A, having mortgaged land to B, agreed to sell it to C and then to D, in whose favour he executed a conveyance bearing a date prior to the contract with C. C sued A and D to have the conveyance set aside and his contract specifically performed and a decree was passed in his favour. While the suit was pending, D paid off B and now sued A and C to recover the money paid by him. Held that the plaintiff occupied the position of a bona fide purchaser of the land.

[I L R, 143]

203. *Title of purchaser*—Transfer of Property Act (IV of 1882), s. 99—Mortgage obtained by mortgagee—

Prior to the mortgagee's sale of the property to the purchaser.

P.

S.

of the mortgagor. *Martand v. ...*Bom. 624 distinguished. *Seemle*—A third person

purchasing mortgaged property bond filed at a sale in

execution of a money decree obtained by the mortgagee against the mortgagor obtains a good title

free from the mortgage lien, unless the sale is made subject to it. *HUSZIN v. SHANKARJI*

[I L R, 23 Bom., 119]

204. *Mortgaged property*—Right to redeem—Purchase

turns out that the purchaser was not a bona fide purchaser as principal. *MUNSOOR ALI KHAN v. MUHAMMAD RAM KHAN*

8 W. R., 393

205. *Priority of debt on sale after hypothecation*—Land in

MORTGAGE—continued.**5. SALE OF MORTGAGED PROPERTY***—continued.*

then a deed the property placed. **RAGHUBHAR SHAW v. BHAIRAO SODHAN**. **I. L. R., 7 Cal., 78**

107.

Purchase by mortgagee. **K. D.** a Hindu widow, by deed appointed **R. S.** to be her general manager, for the conduct of certain suits in her name which were pending in respect of the estate of her deceased husband. By this deed, dated September 23th, 1855, she consented to repay him, within two months of the successful termination of the suits, "all moneys properly disbursed by him on her account, etc." and also to pay him an additional sum as remuneration to himself. **R. S.** entered on the conduct of her business, and advanced certain moneys on her account; and in October 1859 **K. D.** executed in his favour a deed of gift, by which she transferred to him her share in the estate of **R. H.** deceased, which was in the hands of his executors, "and my decreses, 24 and 25, in the Zillah Court, and the decree in the Supreme Court, and the right and interest of all the said decreses and all other real and personal property belonging to the said estate." By a decree of the High Court of 2nd July 1862 in one of the suits brought by **K. D.** the estate of **R. H.** was declared to consist of a share of a certain tabukh, of a share of a house in Calcutta, and of a certain sum of money; and **K. D.** was declared to be entitled to one moiety thereof. **K. D.** afterwards obtained an order for possession, and held possession of the said tabukh until August 1866. **R. S.** continued the conduct of **K. D.**'s business, and advanced more money on her account. In respect of which, on May 31st, 1865, he brought a suit against her; and on September 21st, 1865, obtained a decree in his favour. Under this decree, he attached the right, title, and interest of **K. D.** in the estate of **R. H.**; and on 27th June 1866 it was put up for sale, and purchased by **R. S.** himself. In a suit brought by **K. D.** against **R. S.** and other things for an account, —Held that **R. S.** was a trustee for **K. D.** in respect of her share in the estate of **R. H.**, which he had purchased in execution of his decree. **KAMINI DEBI v. RAMMOHAN SIKHAN**. **5 B. L. R., 150**

108.

*Lien of mortgagee on sale of right, title, and interest of mortgagor.—Writ of *fi. fa.*—Purchase at Sheriff's sale at instance of mortgagee.*—**N, M.** and **G** borrowed from **B** a sum of Rs 12,000, to secure repayment of which they executed in her favour a joint and several bond in May 1863 for payment of the said sum with interest on the 6th May 1864, and also a warrant to confess judgment on the bond on the 27th April 1864. **N, M.** and **G** executed a mortgage, in the English form, of certain property, to **B**, purporting to do so in pursuance of an agreement alleged to have been entered into between them and **B** at the time the money was advanced by **B** in 1863; but the evidence was not sufficient to show that such agreement had been entered into. Under a writ of *fi. fa.* issued previously to the mortgage of 1864,—viz., on the 23rd of March 1864,—in a suit against **M** and **N**, the Sheriff sold to **A**, on the 7th July 1864, the right,

MORTGAGE—continued.**5. SALE OF MORTGAGED PROPERTY—***—continued.*

title, and interest of **M** and **N** in the mortgaged property. Assuming that an agreement to mortgage had been entered into in 1863, **A** had no notice of such agreement. After this a writ of *fi. fa.* was issued by the Sheriff, at the instance of **B**, in execution of whereof **B** had caused to be entered upon the land of May 1863; and under that writ the Sheriff, on the 22nd February 1866, sold the right, title, and interest of **N, M.** and **G** in the mortgaged property, and **A** became the purchaser. The purchase-money at this sale was paid to **B**, and **A** entered into possession of the property. In a suit by **B** against **A** and others on the mortgage of the 27th of April 1864, for foreclosure or sale of the property, the Court below (**PHILLIPS, J.**) held that the *fi. fa.* issued on the 23rd of March 1864, previously to the mortgage, must be taken to have operated against the share of **M** and **N** from the date when it was issued; that even if there was an agreement to mortgage, as alleged, then, although as against **N, M.** and **G** themselves, a Court of Equity would treat such agreement as equivalent to an actual mortgage, yet it would not do so as against a purchaser under the *fi. fa.* without notice; and that the sale of the 7th July 1864, therefore, passed the shares of **M** and **N** to **A** free of any rights or equities of **B**. Further, that the sale by the Sheriff of the 22nd February 1866, having been effected at the instance of **B** for the purpose of realizing the mortgage-debt, was operative, as between **B** and **A**, to pass to **A** the entire shares of **N, M.** and **G** in the property free of **B**'s mortgage-lien. Held on appeal that, no agreement to mortgage being established, the sale by the Sheriff to **A** in 1864 overrode the mortgage to **B**, and passed to **A** the shares of **M** and **N**. Held further that the sale by the Sheriff in 1866 being of the right, title, and interest of **N, M.** and **G**, and made at the instance of **B**, without notice of her mortgage, and **B** having received the purchase-money, which would appear to have been estimated on the value of the unencumbered shares, and no objection having been made to the sale by the mortgagors, who had allowed **A** to hold unchallenged possession ever since, the entire equitable estate in the share of **G** must be taken to have passed to **A**. A mortgagee is not entitled by means of a money-decree obtained on a collateral security, such as a bond or covenant, to obtain a sale of the equity of redemption separately. To allow him to do so would deprive the mortgagor of a privilege which is an equitable incident of the contract of mortgage,—namely, a fair allowance of time to enable him to redeem the property. **BRUGGODUTTY DOSSEE v. SHAMACHURN BOSH**. **I. L. R., 1 Cal., 337**

109.

Priority of mortgage—Sale to enforce lien on land.—On the 15th July 1864 two undivided brothers executed a mortgage of their joint property to the plaintiff for Rs 500, and on the 8th January 1868 they executed another mortgage of the same property for Rs 1,000 to the defendant, who registered it under Act XX of 1866. In August 1871 a suit was brought against the brothers by the plaintiff on the mortgage of

MORTGAGE—continued**5 SALE OF MORTGAGED PROPERTY**
—continued

contended that he had not been a party to the suit by H, and was entitled to possession, and offered to pay to the plaintiff the amount of his purchase money, or to vacate the lands on satisfaction of his

over the defendant, depended on the intention of the parties to the said mortgage, and there was nothing

circumstances the decree passed on the 1st November 1877 conferred an absolute title on the plaintiff who purchased at the auction sale free from all incumbrances created by the mortgagor subsequent to the mortgage of 15th July 1870. The defendant, however, not having been made a party to H's suit to enforce his security, did not lose his right of redemption, which still remained to him. The plaintiff therefore purchased the property subject to the defendant's right of redemption. The High Court passed a decree ordering the defendant to deliver up

of 10th June 1873 or in default should remain for ever foreclosed. **DULLABH DAS DEYCHAND v. LAKSHMAN DAS DEYCHAND** I L R., 10 Bom., 88

211 ————— **Merger of**

before the present suit, a decree followed in 1855 to the effect that an account having been taken of what was due on the mortgage the mortgagor might at any time make a tender of such mortgage-money with interest up to date, and require that the land should be restored. The plaintiff, representing the interest of the original mortgagor, sued for redemption of the mortgage treating the above decree as regulating the rights of the parties from the time when it was made. *Held* that the right of the plaintiff was a right to execute the above decree, subject to the law of limitation, and not a right to obtain a decree for redemption and possession; the law also providing that covenants between the parties to a suit relating to execution of decrees must be determined by the order of the Court executing it. **HARI RAJ CHITLUNKAR v. SHARDEJI BORMARJI SHET** I L R., 10 Bom., 461

312. ————— **First mortgage paid off by third mortgages in ignorance of second mortgage—Registration—Notice—Intention to keep alive first mortgage presumed.—S mortgage**

MORTGAGE—continued**5 SALE OF MORTGAGED PROPERTY**
—continued

land to P. G subsequently obtained a decree, by consent, against S creating a charge on the same and other land, and registered the decree. A, in ignorance of G's decree, paid off P's mortgage, but took no assignment thereof, and took a mortgage from S of all the land covered by G's decree. In a suit by G against S and A to enforce payment of his mortgage-debt, —*Held* that A, not having had notice of G's decree was entitled to stand as first incumbrancer in respect of the money paid to discharge P's mortgage. And that, even if registration was legal notice, an intention to keep alive P's mortgage was to be presumed in favour of A in accordance with the ruling of the Privy Council in *Doss Gopal Doss v. Rambux Seochand*, L. R., 11 I 4, 126. **GANGADHARA v. SIYAHAMA**

[I L R., 8 Mad., 210]

313 ————— **Condition against alienation—Lis pendens**—The proprietor of certain immovable property mortgaged it in July 1875 to A and in September 1875 to L. In October 1878 he sold the property to K. In November 1878 L obtained a decree on his mortgage-bond for the sale of the property. The suit in which L obtained this decree was pending when the property was sold to K. K sued L to have the property declared exempt from liability to sale in the execution of L's decree, on the ground that the mortgage to L was invalid, it having been made in breach of a condition contained in K's mortgage-bond that the mortgagee would not alienate the property until the mortgage-debt had been paid. *Held* that the purchase by K

SAGAR LACHMIN NARAIN v. KOTESHAH NATH
[I L R., 3 All., 829]

214. ————— **Rights of parties on sale—Prior and puisne mortgages—Purchase by prior mortgagee of equity of redemption at a Court sale—Evidence of intention to keep mortgage alive—Where a prior mortgagee purchased the equity of redemption at a Court sale—Held, following the Full**

slight evidence will suffice to show that the prior mortgagee intended to retain the benefit of his mortgage. The fact that the mortgage-deed remains with the mortgagee who purchases is evidence that he intends to retain the benefit of his mortgage. **SHARADAPPA v. HALAPA** I L R., 8 Bom., 561

215. ————— **Presumption as to person paying off a prior mortgage—Construction of stipulation in mortgage-deed—The**

MORTGAGE—continued.**5. SALE OF MORTGAGED PROPERTY**
—continued.

quently sold is liable for a debt for which the land was previously hypothecated. *SADAGOPA CHARIYAR v. RUTHNA MUDALI* . . . 5 Mad., 457

206. — — — — — *Lien—Right of purchaser—Purchase by mortgagee.*—*A*, being indebted to *B*, bound himself by deed not to alienate his rights in certain property until his debt to *B* was satisfied; if he did alienate, provision was made for a decree to issue and to be executed. *A* subsequently gave a patni of the property to *C*. After the creation of the patni, *B* obtained and executed the decree provided for in the deed between himself and *A*, and purchased in execution the right of *A* in the property, and afterwards sold the same rights to the plaintiff. *Held* that, in a suit against *C* to set aside the patni, the plaintiff had no right to set it aside, it having been created prior to his purchase from *B*, and the lien possessed by *B* had not passed to him. *ERSKINE v. DHUN KISHEN SEIN* . . . 8 W. R., 291

SOONEY RAM MARWARIE v. BYJNATH KOOR
[10 W. R., 88]

See SOUJHAREE COOMAR v. RAMESHUR PANDA.
RAMESHUR PANDA v. SOUJHAREE COOMAR
[4 W. R., 32]

207. — — — — — *Effect of subsequent mortgage—Merger.*—*A* creditor holding a mortgage on the lands of his debtor does not necessarily surrender that mortgage, or lower its priority, by taking a subsequent mortgage, including the same lands with other lands, for the same debt. Whether the earlier mortgage becomes merged and extinguished or not is a question of intention. *GOLUKNATH MISSER v. LALLA PREM LAL*
[I. L. R., 3 Cal., 307]

208. — — — — — *Sale in execution of decree—Purchase subject to mortgage securities—Extinguishment of lien on purchase by mortgagee.*—Defendant No. 1 (*G C*), on 9th August 1863, borrowed money from plaintiff upon a bond, hypothecating property by way of simple mortgage. On 27th August 1867, he executed a similar instrument in favour of defendant No. 2 (*G B*) on a further loan. On 13th May 1867, he executed a second bond in favour of plaintiff for the amount (principal and interest) due under the first bond. On 29th May 1869, plaintiff obtained a decree against defendant No. 1 for the money due under the bond of 13th May 1867, and on 30th July 1870 defendant No. 2 (*G B*) also obtained a decree upon his bond against the said debtor. In execution of plaintiff's decree, the property was sold and purchased by decreeholder on 25th August 1870. After this, *G B* also executed his decree and attached the property, which, notwithstanding plaintiff's objection, was put up to sale and purchased by *G B*, who obtained possession. Plaintiff sued to have the sale to the latter set aside and his own purchase upheld. *Held* that plaintiff, on purchasing at the sale in execution, took subject to the defendant's security to this extent, that the defendant by paying off the prior debt might establish his own security. *Held* that the question

MORTGAGE—continued.**5. SALE OF MORTGAGED PROPERTY**
—continued.

whether plaintiff's first security was extinguished by his taking a second security, covering the original debt with interest, would depend upon the intention of the parties, which, in this case, was shown by the original bond having remained in the possession of the creditor. *GOPEE BUNDHOO SHANTRA MOHAPATUR v. KALEE PUDO BANERJEE* . . . 23 W. R., 338.

209. — — — — — *Extinction of charge—Intention of parties—Presumption.*—Whether a mortgage, paid off, has been kept alive or extinguished, depends upon the intention of the parties; the mere fact that it has been paid off not deciding the question whether or not it has been extinguished. Express declaration of intention will cause either the one result or the other, and in the absence of such expression the intention may be inferred, either one way or the other. A lender of money upon a mortgage, which, however, having been made by a person not having authority to charge the greater part of the property included in it, was to that extent invalid, relied upon a charge effected in a prior paid-off mortgage to another mortgagee of the same property. The balance due for the prior mortgage-debt had been paid out of the money advanced on the later, and the prior instrument had come into the possession of the present mortgagee. *Held* that it must be presumed, in the absence of any expression of intention to the contrary, that the borrower, who claimed to be the owner of the property which he attempted to charge, intended that the money should be applied in paying off and extinguishing the prior mortgage, there being no intermediate incumbrance. It being also presumable that the lender lent the money upon the security of the later mortgage, he did not become entitled to an additional security merely because that which he had taken had thus proved invalid in part. *Held* therefore that the prior mortgage had been extinguished. *MOHESH LAL v. BAWAN DASS*

[I. L. R., 9 Cal., 961; 13 C. L. R., 221
L. R., 10 I. A., 62]

210. — — — — — *Two mortgages to same mortgagee—Merger of first mortgage—Intention—Decree on second mortgage—Other mortgages not made parties to suit—Purchaser at auction sale—Priority—Suit by purchaser for possession—Right of other mortgagees to redeem—Form of decree.*—On the 15th of July 1870 certain lands were mortgaged by their owners (*S* and his sons) to *H*, with possession under a registered mortgage. On the 11th of June 1871 the same lands were mortgaged without possession to the defendant; on the 10th of June 1873 a second mortgage, purporting to give possession, was executed to *H*; on the 12th of June 1873 a second mortgage, also purporting to give possession, was passed to the defendant; on the 15th of November 1877 *H* obtained a decree against the mortgagors upon his mortgage of 10th June 1873, and sold the lands which were purchased by the plaintiff. The plaintiff sought to obtain possession, but was obstructed by the defendant. He thereupon brought this suit. The defendant.

MORTGAGE—continued.**5 SALE OF MORTGAGED PROPERTY***—continued*

of the subsequent mortgages not to keep alive the prior securities for his benefit, and that it was quite clear from the circumstances of the present case that, at the time of advancing the money to P, R intended to keep alive the prior securities for his benefit. *Gokuldas Gopal Das v Puranmal Prem-suk Das*, 1 L R, 10 Calc, 1035 relied upon. Held further that on the day of attachment of the property purchased by D nothing more could be attached than the equity of redemption belonging to P, and that according to the provisions of s 276 of the Civil Procedure Code, the subsequent discharge by P of the prior mortgages could not enlarge the subject of the attachment, and therefore D purchased only the equity of redemption in the property. *Divo Bannhu Shaw Chowdhury v Nistarini Dasi* 3 C W N, 153

219 ————— *Second mortgage*

in dis-
In 1886
T, and

in execution of his decree he caused the property in dispute to be sold and purchased it himself obtaining a certificate of sale on the 1st November 1886. On the 13th February 1888 T mortgaged the property in dispute along with the property to the defendant

obstructed by the defendant. Thereupon the plaintiff brought this suit for possession. Held that the plaintiff was entitled to possession. The mortgage to the defendant was subsequent to the plaintiff's purchase of the equity of redemption. The defendant did not know of that purchase. He took the mortgage from T, to whom he advanced the money to pay off the previous mortgage to G. There was nothing to show that there was any intention to keep G's

G would have been burdened with G's mortgage, and as the defendant, when he advanced the money to T to pay off that mortgage did not know that T was not the owner of the equity of redemption, the plaintiff should give credit to the defendant for the sum paid by him; but as the defendant's mortgage comprised other properties besides the one in dispute, the plaintiff should recover possession or payment to the defendant of a proportionate part of G's mort-

MORTGAGE—continued**5. SALE OF MORTGAGED PROPERTY***—continued.*

gage-debt, having regard to the value of the property in dispute and that of the other mortgaged properties. *Mahomed Shamsul Hedi v Shewakra* 11 B L R, 226 L R, 21 A. 7, followed. *10 M GOMAJI v VISWANATH AMRIT TILYANKAR* [L. L. R, 18 Bom., 8

See *YADAO BABAJI SURYARAO v AMBO*

[L. L. R., 21 Bom., 50]

220. ————— *Sale under second of two mortgages—Payment under order of Court without jurisdiction by purchaser to first*

the estate, no successor of the former mortgagee could again proceed to sell up the estate, even though the Court which assessed the money-value of the charge on the estate may not have had the jurisdiction to do so for in accepting the money, the former mortgagee released the estate from all further liability under his bond. *JANKER PERSHAD v AJODHYA DASS* [25 W. R., 2

221. ————— *Purchase first mortgage after second mortgage—Set off first mortgage against purchase-money—Priority*—If the first mortgage purchases the property mortgaged after a second mortgage is created upon he does not thereby lose the benefit of his first mortgage if the money due under the first mortgage is set off against the consideration of the sale. Accordingly where a second mortgagee obtained a decree upon his mortgage subsequently to a sale of the mortgaged property to the first mortgagee who had been allowed to set off the money due to him on his mortgage against the consideration the latter is entitled, as against the auction purchaser at the sale, to execution of the decree to priority in regard to his mortgage. *HISSEY DASS SINGH v NHO PERSHAD SINGH* 5 C L R., 2

222. ————— *First and second mortgages—Assignment by mortgagee to assignees*—In March 1865 the proprietors of a

should be redeemed on payment of the principal sum without interest. In April 1866 R mortgaged the same lands and interests under the mortgage of March 1865 to S, retaining possession of the share. In February 1867 the proprietors of the share again mortgaged it to A for a further term. Under the mortgage, R was entitled to take the profits of the share in lieu of interest, and the mortgage was redeemable on payment to him of the principal sum due thereunder and of that due under the mortgage

MORTGAGE—continued.**5. SALE OF MORTGAGED PROPERTY**

—continued.

presumption, generally speaking, in the absence of any evidence to the contrary, is that a person whose money goes to satisfy a prior mortgage intends to keep alive for his benefit that prior mortgage. Where a mortgage-bond contained the following stipulation: "And I shall redeem the mortgage-bond of A and deliver it to you to your satisfaction,"—*Held* that it was an indication of the intention on the part of the mortgagee to keep alive the security of A in his favour. **AMAR CHANDRA KUNDU v. ROY GOLOKE CHANDRA CHOWDHURI**

[4 C. W. N., 789]

216. ————— *Presumption that person paying off a mortgage intends to keep the security alive.*—In 1861 B granted a lease of his zamindari to A for 30 years, A undertaking to pay off all debts then due by B. B died in 1882, and his successor sued A and obtained a decree that on payment of R1,20,000 A should give up possession of the zamindari. This sum having been paid into Court, A lost possession of the zamindari. On January 5th, 1875, A had mortgaged the whole zamindari, which consisted of 22 villages, to M to secure a loan of R1,00,000 borrowed by A to pay off the debts of B which A undertook to pay in 1861. On 27th June 1879 A, being indebted to M in the sum of R1,78,000, paid M R1,00,000 and undertook to pay the balance out of the income of the estate, M releasing the 22 villages from the mortgage of January 5th, 1875. On June 28th, 1879, A executed a mortgage of the 22 villages to L, to secure repayment of R1,30,000. Of this sum, R1,00,000 was borrowed to pay M, and R30,000 was a prior debt due by A to L. Of the R1,00,000 paid to M, R27,000 was specially applied to discharge so much of the charge created by the mortgage of January 5th, 1875. On January 30th, 1875, A borrowed from S R43,000, and mortgaged to her 10 of the 22 villages of the zamindari. In 1885 S sued L to have her debt declared a first charge on the money paid into Court by the zamindar. The Subordinate Judge held that L had a prior claim on the fund, and dismissed the suit. *Held* on appeal, following the principle of the decision in *Gokaldas Gopaldas v. Huranmal Premsukhdas* (L. R., 11 I. A., 1226 : I. L. R., 10 Calc., 1035), that L was entitled to a first charge on the fund to the extent of R27,000 which had been applied to pay off the mortgage of January 5th, 1875. **RUPABAI v. AUDIMULAM**

[I. L. R., 11 Mad., 345]

217. ————— *Extinguishment of prior mortgage—Intention—Effect of payment of prior mortgage by subsequent incumbrances.*—The mortgagor's right, title, and interest in certain immoveables in the Dekkan subject to a first and second mortgage were sold in execution of a decree to a purchaser who afterwards paid off the first mortgage. *Held* that, as he had a right to extinguish the prior charge or to keep it alive, the question was what intention was to be ascribed to him; and that, in the absence of evidence to the contrary, the presumption was that he intended to keep it alive

MORTGAGE—continued.**5. SALE OF MORTGAGED PROPERTY**

—continued.

for his own benefit. Where property is subject to a succession of mortgages, and the owner of an ulterior interest pays off an earlier mortgage, it is a matter of course, according to the English practice, to have it assigned to a trustee for his benefit, as against intermediate mortgagees, to whom he is not personally liable. But in India a formal transfer for the purpose of a mortgage is never made, nor is an intention to keep it alive even formally expressed. It was ruled in the English Court of Chancery in *Toulmin v. Stere*, 3 Mer., 210, that the purchaser from an owner of an equity of redemption with actual or constructive notice of another intermediate incumbrance is precluded, in the absence of any contemporaneous expression of intention, from alleging that, as against such other incumbrance, the prior mortgage paid off out of the purchase-money is not extinguished. That case was not identical with this where the prior mortgage was not paid off out of the purchase-money, but was paid off afterwards by the purchaser. The above ruling, however, is not to be extended to India, where the question to ask is, in the interests of justice, equity, and good conscience there applicable—what was the intention of the party paying off the charge. **GOKALDAS GOPALDAS v. PURANMAL PREMSUKHDAS**

[I. L. R., 10 Calc., 1035]

L. R., 11 I. A., 126

218. ————— *Equity of redemption, Purchase of—Payment—Prior mortgagees, Payment to—Keeping securities alive—Attachment of mortgaged property.*—One P borrowed from one L a certain sum upon a mortgage of certain properties. He subsequently executed a second mortgage in respect of some of these properties in favour of one S. The legal representative of L obtained a decree on P's mortgage. While steps were being taken for the execution of that decree, P entered into negotiations with one R, from whom he borrowed R40,000 to pay off the prior mortgages upon a mortgage of the properties included in L's mortgage and other properties, and he promised to take a reconveyance of the properties and make over the mortgage-deeds to R. Two days before the mortgage to R, one of the properties comprised in R's mortgage was attached in execution of a money-decree against P, and subsequently purchased by D, the defendant No. 2, with notice of R's lien. P paid off his prior mortgages on the day following R's mortgage. R having died, his widow instituted the present suit upon the mortgage, contending that the property purchased by D was subject to her claim, he purchasing only the equity of redemption. D contended that he purchased the property free from all encumbrances. The Subordinate Judge gave effect to the plaintiff's contention, and made the usual mortgage decree against P and D. On appeal by D,—*Held* that the mere fact that the mortgagor pays the money to the prior encumbrancers for his own benefit, namely, with the object of getting a reduction in the amount of the debt, cannot be taken as an indication of an intention on the part

MORTGAGE—continued**5. SALE OF MORTGAGED PROPERTY***—continued*

made in *D*'s favour had no prejudicial effect on the right of *A* under his auction purchase that the purchase by *D* of October 1879 did not extinguish his prior mortgages, but such mortgages were still subsisting and *A* purchased subject to them that there having been no fraud or collusion on *D*'s part, *A* must be held to have purchased subject only to *D*'s prior mortgages and not subject to *D*'s mortgage of October 1877. *Held* also that, as *D*'s purchase of October 1879 was made without *N* having had an opportunity of redeeming *D*'s prior mortgages *D*'s purchase was subject to *N*'s mortgage of July 1877, and therefore could not deprive *A* of what he had purchased at the auction sale of the 20th November 1880. *Held* therefore that all the relief that *D* was entitled to was a declaration that, as prior mortgagee under the mortgages of July 1874 and July 1876 he was entitled, as against *A*, to retain possession of the property, until such mortgages were satisfied. **ALI HASAN v. DHIRIA**

[I. L. R., 4 All., 518]**222.***First and*

second mortgages—Payment by purchaser of mortgaged property of first mortgage—Right of purchaser to benefits of first mortgage—Right of

second mortgagee sued to bring the property to sale in satisfaction of his mortgage. *Held* that the prior mortgage was not extinguished, and that the purchasers of the equity of redemption had, by paying off that mortgage, acquired an equitable right to its benefits, which they could use against the second mortgage. **Gokaldas Gopaldas v. Puranmal**

Prem Sukhdas, I. L. R., 10 Cal., 1035, followed. Per MAHMOOD, J., that the ruling of the Privy Council in Gokaldas Gopaldas v. Puranmal Prem Sukhdas I. L. R. 10 Cal., 1035, did not go beyond laying down the proposition that when the purchaser of the equity of redemption pays off a prior mortgage,

to disburden such possession. Also per MAHMOOD, J., that although the persons who had paid off the prior mortgage were entitled to claim its benefits, they could not be understood to have acquired rights greater than those which the prior mortgagee himself possessed; that as holders of the equity of redemption they could not resist the suit which aimed at enforcing a valid security, and, as persons entitled to the benefits of the prior mortgage, they were at best in

MORTGAGE—continued.**5. SALE OF MORTGAGED PROPERTY***—continued.*

the position of assignees of that mortgage, that the union of the two capacities could not co-exist upon them rights higher than those which the mortgagee they had paid off created, that a puisne incumbent is not prevented by the mere fact of the existence of a prior mortgage from enforcing his

Salik traya I. L. R. 3 All. 652 Ramu Varian v. Subbaraya Mudali 7 Mad. 223, and Mul Chand Kuber v. Lallu Triam, I. L. R. 6 Bom. 404 referred to SIRBADI RAI v. RAGHUNATH PRASAD . . . I. L. R., 7 All., 588

227.*First and*

second mortgages—Payment by purchaser of mortgaged property of first mortgage—Right of purchaser to benefits of first mortgage—Right of second

*mortgages to bring to sale mortgaged property—Registered and unregistered instruments—Optional and compulsory registration—Act III of 1877, s. 50—At a sale in execution of a decree, *J* purchased certain property which was at that time subject to two mortgages—the first under an unregistered deed in favour of *M* and dated in 1872, and the second under a registered deed in favour of *L* and dated in 1880. The registration of both deeds was optional the former under Act VIII of 1871 and the latter under Act III of 1877. *J* subsequently satisfied the mortgage under the registered deed of 1880 which was delivered to him. *M* then brought a suit to recover the money due to him under the mortgage-deed of 1872 by sale of the mortgaged property. *Held* by OLIVER J. that, applying the rule laid down by the Privy Council in *Gokaldas Gopaldas v. Puranmal Prem Sukhdas I. L. R. 10**

*Calcutta, 1035, followed. Per MAHMOOD, J., that the word "unregistered" in s. 50 of the Registration Act must, in reference to the circumstances of the present case, be read as "not registered under Act VIII of 1871" and that, on reading the section, the registered mortgage-deed of 1880 was entitled to priority over the unregistered mortgage-deed of 1872. **Lakshmin Das v. Inp Chant, I. L. R., 2 All., 831, and Sir Ram v. Bhagirath Lal, I. L. R., 4 All., 227, distinguished. Also per MAHMOOD, J., that the position of *J* by***

—continued.

[I. L. R., 2 All., 142

— First and second property by

MORTGAGE—continued.
SALE OF MORTGAGED PROPERTY

—continued.

[L. L. R., 3 All., 682

225. _____ Condition
Lienation—First and second mortgagees—
_____ of mortgaged property.—A
_____ of a condition

PROPERTY IN 1911. SPAD. GAYA PRASAD v. [I. L. R., 3 All. 610.]

Condition—

225. *First and second mortgages—*
Against alienation—Purchase of mortgaged property.—A purchase by mortgaged property in breach of a condition against alienation is valid except in so far as it encroaches upon the right of the mortgagee, and, with this reservation, such a condition does not bind the property so as to prevent the acquisition of a valid title by the transferee. *Chuni v. Thakur Das, I. L. R., 1 All., 126*; *Mul Chand v. Baigobind, I. L. R., 1 All., 610*; and *Lachmin Narain v. Koteswar Nath, I. L. R., 2 All., 826*, observed on. A mortgage is not extinguished by the purchase of the mortgaged property by the mortgagee, but subsists after the purchase, when it is the manifest intention of the mortgagee to keep the mortgage alive, or it is for his benefit to do so. *Gaya Prasad v. Salik Prasad, I. L. R., 3 All., 682*, and *Ramu Naikan v. Subbaraya Mudali, 7 Mad., 229*, followed. It is not absolutely necessary for the first mortgagee of property, when suing to enforce his mortgage, to make the second mortgagee a party to the suit. If the second mortgagee is not made a party to the suit, he is not bound by the decree which the first mortgagee may obtain for the sale of the property, but can redeem the property before it is sold; but if he does not redeem, and the property is sold in execution of the decree, his mortgage will be defeated, unless he can show some fraud or collusion which would entitle him to defeat the first mortgage or to have it postponed to his own. The ruling of TURNER, J., in *Khush Chand v. Kallian Das, I. L. R., 1 Mad., 240*, followed. In July 1874 a usufructuary mortgage of certain immoveable property was made to D. In July 1875 a portion of such property was again mortgaged to D. The instrument against alienation. In July 1877 the condition against alienation. In July 1877 the whole property was mortgaged to N. In October 1877 it was again mortgaged to D. N. sued the mortgagor on his mortgage in July 1877, and on the 29th September 1879 obtained a decree against him for the sale of the property. In October 1879 the mortgagor sold the property to D in satisfaction of his mortgages of July 1875 and October 1877. D did not offer to redeem N's mortgage, and on the 20th November 1880 the property was put up for sale in execution of N's decree (D's objection to the sale having been previously disallowed), and was purchased by A. D, who was still in possession under his mortgage of July 1874, then sued A for a declaration of his proprietary right to the property, claiming by virtue of his mortgages and the sale of October 1879. Held, applying the rules stated above, that N's mortgage of July 1877 could not affect D's right under his mortgage of July 1875, but N took subject to such mortgage; nor could the auction-sale of the 20th November 1880, which took place in enforcement of N's mortgage, affect D's prior mortgages; and therefore the condition against alienation

MORTGAGE—continued.**5. SALE OF MORTGAGED PROPERTY**

—continued.

of Property Act. *Muhammad Sami-ud-din v. Man Singh*, I. L. R., 9 All., 125, followed. *GAJADHAR v. MUL CHAND* I. L. R., 10 All., 520

231. — *Sale in execution of decree of mortgaged land—Purchase of equity of redemption by decree-holder under s. 294 of the Code of Civil Procedure—Execution of decree in respect of balance—Nature of price paid*

a decree, and, the money not being paid as thereon decreed, applied for execution and brought to sale the equity of redemption vested in C by virtue of the sale. By leave of the Court A bid at the Court-sale and bought the right of redemption and recovered back possession of the land sold to C. Subsequently he again applied for execution of the decree in respect of the balance by attachment of certain moveable property, and contended that he was bound to give the defendant credit only for the price which he actually paid at the Court-sale for the equity of redemption. The defendant contended that A was bound to give credit for the full value of the land under mortgage. Held that, having obtained leave of the Court to bid under s. 294 of the Code of Civil Procedure, A's position was that of an independent purchaser, and that the price, which an independent purchaser must be taken to pay when he buys property under mortgage for a cash payment made to the mortgagee on account of his equity of redemption, is the cash payment for the equity of redemption plus the debt, i.e., the amount undertaken to be paid to the mortgagee, and that for these amounts A was bound to give credit. *KRISHNAGAMI AYYAR v. JANAKIAMMAL*.

[I. L. R., 18 Mad., 153]

232. — *Purchase of equity of redemption by subsequent mortgagee—Priority of mortgage—Merger of former mortgage*

the fact that the prior incumbrance had at the time taken the form of a decree. *Adams v. Swell*, I. L. R., 5 Ch. D., 645, followed. *PURNIMA CHURN v. VENKATA SUBBARAYALU* I. L. R., 20 Mad., 483

233. — *Sale in execution of mortgage-decree—Sale-certificate—Confirmation of sale—Sale for arrears of Government revenue—Civil Procedure Code (Act XIV of 1852), s. 316—Act XI of 1859, ss. 13, 14, 54—Transfer of*

MORTGAGE—continued.**5. SALE OF MORTGAGED PROPERTY**

—continued.

ber 1883. In the meantime a 14-anna share of the estate, including the 54-anna share, which was separately liable for its own share of Government revenue, was on the 26th September 1883 sold for arrears of the June list of Government

possession of the 54-anna share so purchased by her,—

existence
virtue of
between
the date
of its confirmation, 18th December 1883, the mortgage lien was fully preserved, that P's purchase being governed by s. 54 of Act XI of 1859, he acquired the share subject to all encumbrances, including the mortgage lien of D; that s. 73 of the Transfer of Property Act does not in such a case deprive a mortgagee of his lien over the property and confine him to proceeding against the surplus sale-proceeds, that as the judgment-debtor had the right, at any time between the 17th August 1883 and the 18th December 1883, to redeem the property upon payment of principal, interest, and costs to D, P, having acquired the rights of the judgment-debtor by virtue of his purchase on the 26th September 1883, was equally entitled to redeem between that date and the 18th December 1883, but not having availed himself of that right, the property became absolutely vested in D on the 18th December 1883 and that consequently D was entitled to the relief claimed. *PARN CHURN PAL v. PURNIMA DASI* I. L. R., 15 Cal., 548

234. — *Mortgageland subsequently sold by mortgagee in execution of a money-decree—Purchaser at such sale without*

decree sells property as belonging to his judgment-debtor, he is afterwards stopped from enforcing, as against the purchaser, a prior mortgage of the property, which has been created in his own favour, but of which he has given no notice at the time of the sale, and in ignorance of which the purchaser has bid for the property and paid the full price. This principle applies even though the mortgagee

MORTGAGE—continued.**5. SALE OF MORTGAGED PROPERTY**
—continued.

reason of his having paid off the registered mortgage of 1880 could at best be that of an assignee of that mortgage having priority over the mortgage-deed on which the plaintiff was suing; that such priority could not enable him to place the equity of redemption upon a higher footing than it would have been had he not paid off the registered mortgage of 1880; and that, as a consequence, the sale of the property in enforcement of the mortgage of 1872 should be allowed to take place, but subject to the rights of priority which *J* had acquired by reason of his having paid off the registered mortgage of 1880. *Sirbadh Rai v. Raghumath Prasad*, *I. L. R.*, 7 All., 568, and *Gokaldas Gopaldas v. Puranmal Premnathdas*, *I. L. R.*, 10 Cal., 1035, referred to. *JANKI PRASAD v. MAUTANGUI DEBIA*

[*I. L. R.*, 7 All., 577.]

228. — *First and second mortgages—Payment by purchaser of mortgaged property of first mortgage—Right of second mortgagee to bring to sale mortgaged property subject to first mortgage.*—In 1874 a plot of land No. 111, which in 1866 had been mortgaged to *L*, was with other property mortgaged to *R*. In 1878 the equity of redemption in plot No. 111 was purchased by *J*, who paid off the mortgage of 1866. *R* brought a suit against *J* to bring to sale the whole of the property included in the mortgage of 1874. The Court of first instance decreed the claim in part exempting from the decree plot No. 111, on the ground that the defendant, by reason of having purchased the equity of redemption in that plot and having paid off the mortgage of 1866, stood in the position of a first mortgagee of that plot, and his mortgage had priority over the plaintiff's mortgage of 1874. The Full Bench modified the decree of the Court of first instance by inserting after the words "land No. 111 be exempted from the hypothecation lien" the words "in that property the interest of the plaintiff as second mortgagee only to be sold." *Per OLDFIELD, J.*, that the second mortgagee could not bring the land to sale so as to oust the first mortgagee, whose mortgage was usufructuary, and get rid of the first mortgage without satisfying it; but that he had a right to sell such interest as he possessed as second mortgagee. *Per STRAIGHT, J.*, that the plaintiff was entitled to bring to sale the property charged to him under his mortgage of 1874, subject to the rights existing in favour of the first mortgagee of 1866: in other words, that a purchaser at a sale in execution of the decree would have no further right than a right to take the property subject to the right of the first mortgagee to possession of the property included in his instrument, and his other rights under that instrument, so long as it endured. *RAGHUNATH PRASAD v. JURAWAN RAI*

[*I. L. R.*, 8 All., 105]

229. — *Suit by mortgagee purchasing part of property—Sale by first mortgagee in execution of decree upon second mortgage held by him—Interest acquired by purchaser at such sale—Sale of portions of mortgaged property*

MORTGAGE—continued.**6. SALE OF MORTGAGED PROPERTY**
—continued.

—*Mortgagee not compelled to proceed first against unsold portions—Enforcement of mortgage against purchaser not having obtained possession.*—At a sale in execution of a decree for enforcement of a hypothecation-bond, the decree-holder, by permission of the executing Court, made bids, but the property was purchased by another. At that time the decree-holder held a prior registered incumbrance which he did not personally announce. In a suit brought by him subsequently to enforce this incumbrance, —*Held* that it could not be said that under the circumstances the plaintiff must be taken to have sold, in execution of his decree, the interest which he held under the bond now in suit; that he could not be compelled to proceed first against those portions of the mortgaged property which had not been sold; and that the bond was enforceable against a purchaser of part of the mortgaged property who had never obtained possession. *BANWARI DAS v. MUHAMMAD MASHIAT* . . . *I. L. R.*, 9 All., 690

230. — *Sale of equity of redemption—Suit by mortgagee for sale of mortgaged property—Purchaser not a party to suit—Sale of mortgaged property in execution of decree obtained by mortgagee—What passed—Right of purchaser of equity of redemption—Redemption.*—On the 21st December 1871, three of the defendants in this suit mortgaged four groves to *H*. In 1872 the plaintiffs obtained a money-decree against one *D*, and in August 1872, in execution of that decree, sold the said groves, and at the sale purchased them and also two mills which were not in dispute in this suit. The decree against *D* had been found to have the same effect as if it were had and obtained against all the mortgagors. Of this sale *H* had notice; in fact, he opposed it. Subsequently *H*, the mortgagee, sued the mortgagors on their mortgage, and obtained a decree on it, and under the decree brought the said groves to sale in 1877, and purchased them himself. In May 1880 *H* sold the groves to two of the defendants. The plaintiffs, who were not parties to the suit which resulted in the decree under which the groves were sold in 1877, instituted this suit for possession of the groves. *Held* that, notwithstanding the sale of 1872, what was sold under the decree of 1877 was the right, title, and interest of the mortgagors, as they existed at the date of the mortgage of 21st December 1871, with which would go the rights and interest of the mortgagee; and although at a sale under a decree for sale by a mortgagee the right, title, and interest of the mortgagor which is sold is his right, title, and interest at the date of the mortgage, and any right, title, and interest he may have acquired between the date of mortgage and of the sale, still any puisne incumbrancer or purchaser from the mortgagor prior to the date of the mortgagee's decree, and who was not a party to the suit in which the mortgagee obtained his decree, would have the right to redeem the property which the mortgagor would have had but for the decree. This view is consistent with the principles of equity and recognized by the Transfer

MORTGAGE—continued.**5. SALE OF MORTGAGED PROPERTY**
—continued.

a portion of their security without asking for an account and offering to pay whatever might be due on the footing of the mortgage **SUBBARAO v. VENKATARAM** I. L. R., 15 Mad., 234

238. — *Interest acquired by purchaser—Previous sale in execution of a money-decree—Suit to recover possession by mortgagee purchaser—Right of previous purchaser to redeem.*—A purchaser at a sale in execution of a decree on a mortgage acquires the estate of

and was purchased by *D R* and others, who were put in possession. Afterwards *D A* and *V* upon their mortgage obtained a decree to which *D R* and others the purchasers under the money-decree, were not made parties. In execution of the mortgage-decree, the property was purchased by *D A*, to whom symbolical possession was given. In a suit brought by *D A* against *D R* and others to recover actual possession,—*Held* that *D R* and others were entitled to have an opportunity of redeeming the property from *D A*. *Held* further that, had *D R* and others been made parties to the mortgage suit, they would have been entitled to redeem on payment of what was then due on the mortgage, and that therefore these were the terms on which they must now be allowed to redeem. **DADABA ABUNDI v. DAMODAR RAJENATH** I. L. R., 10 Bom., 486

the present defendants *B* brought a suit on the mortgage joining *A* and *C*, but not *C*'s transferees as defendants. *C* did not appear, and a decree was passed by consent for Rs. 60, and land *Z* was brought to sale and purchased for Rs. 270 by the plaintiff, who now sued the defendants separately for possession. *Held* that the defendants, not having been joined in the previous suit, were entitled to redeem on payment of Rs. 60 and interest. **SIVATHI UDAYAN v. RAMASUBBAYAN**

[I. L. R., 21 Mad., 64]

240. — *Mortgage of joint property—Subsequent mortgage of unascertained shares—Partition—Rights of purchasers in*

MORTGAGE—continued.**5. SALE OF MORTGAGED PROPERTY**
—continued

execution of decrees of the two mortgages—*Form of decree*—Joint property belonging to an undivided Hindu family constituted of five branches was mortgaged to *A* in 1870, and the share of one branch was mortgaged to *B* in 1880. A partition took place in 1881 when the mortgagors of *B* had their share allotted to them. In 1888 *A* sued on his mortgage not joining *B* as a defendant, and obtained a decree, in execution of which he brought to sale the property comprised in his mortgage and purchased it in September 1889. In 1889 *B* sued on his mortgage not joining *A* as a defendant, and obtained a decree, in execution of which he brought his mortgage, one share to sale and purchased it and obtained possession in August 1889. *A*, in taking possession of the property purchased by him, was obstructed by *B*, but an order was made in his favour. *B* now sued for the cancellation of this order and for

The defendant appealed against this decree, the plaintiff taking no objections to it. *Held* on second appeal that the decree was wrong, and that a decree as asked for by the plaintiff should be substituted for it. Such decree, however, was not to affect the right of the plaintiff to sue for redemption, nor of the defendant to enforce his rights as prior mortgagee. **VENKATANARAYANAM v. RAMIAH** I. L. R., 2 Mad., 108. **NANA K. CHAND v. TELUKDER** I. L. R., 5 Cal., 265. **and DURGAPAL v. BOLAKIE** I. L. R., 5 Cal., 269, referred to. **RAMAVALUHAN CHETTI v. ALAKONA PILLAI** I. L. R., 18 Mad., 500

241. — *Sale in execution of decree in prior unregistered mortgage—Right of purchaser—Claim of subsequent mortgagee in possession under registered mortgage—Rights of a subsequent mortgagee where he was not a party to the suit on prior mortgage—Right of redemption—Transfer of Property Act (11 of 1882) s. 73.*—In October 1887 the plaintiff purchased certain lands at a sale held in execution of a decree passed on an unregistered mortgage effected in 1862. The defendant was in possession as mortgagee under a subsequent registered mortgage of 1867. He was not a party to the suit and decree of 1887. The plaintiff sued for possession. The defendant claimed that the plaintiff could not recover possession without paying off his (the defendant's) claim. *Held* that at the execution sale the plaintiff bought the property in dispute free from all subsequent incumbrances, subject only to the right of the defendant, if he so desired, to retain possession. *Held* also that the plaintiff as purchaser stood in the place of the prior mortgagee and had a right to possession; that the defendant as subsequent mortgagee could not compel the plaintiff to pay off his (the defendant's) mortgage, but that the defendant, not having been a party to the suit on the prior mortgage, had a right, if he wished to retain possession, to pay off the plaintiff's claim. **Mohun Manohar v. T. J. U. A.** I. L. R., 10

MORTGAGE—continued.**5. SALE OF MORTGAGED PROPERTY**
—continued.

Bom., 224, referred to and followed. **DESAI LALLU-BHAI JERABHAI v. MUNDAS KUBERDAS**

[*I. L. R.*, 20 *Bom.*, 390

242. — — — — — *Purchase by first mortgagee—Right of, as against a subsequent one.*—A prior mortgagee, having purchased, may still use his mortgage as a shield against the claims of subsequent mortgagees. **RAMU NAIKAN v. SUBBARAYA MUDALI** 7 *Mad.*, 229

243. — — — — — *Sale subject to mortgage—Prior mortgage redeemed—Liability of purchaser.*—S mortgaged his land to B in 1875, then to M in 1879, and then sold it to K in order to pay off the mortgage to B. The purchase-money was paid to B, but K took no steps to keep B's mortgage outstanding. *Held* that K could not use B's mortgage as a shield against M. **KRISHNA REDDI v. MUTTU NARAYANA REDDI** [*I. L. R.*, 7 *Mad.*, 127

244. — — — — — *Bona fide purchase of property subject to mortgage without notice.*—A, after mortgaging his property to B, conveyed it by sale as unincumbered to C, who took proceedings against the mortgagor, A, and obtained a decree for possession. Meantime B brought a suit upon his mortgage, and obtained a decree under which he sold the property to D. B then sued D for possession. *Held* that the Judge was right in finding that the defendant, being a *bona fide* purchaser for value without notice, was entitled to hold the property as against the plaintiff. **MAHOMED ASHRUF v. KUREEM OODDEEN** 24 *W. R.*, 468

245. — — — — — *Purchase of equity of redemption by first mortgagee—Priority—Notice—Merger.*—On the 20th of August 1870 M, the owner of a house in Gujarat, mortgaged it to the defendant's father with possession. On the 2nd of December 1871 he made a *san-mortgage* of the same house to the plaintiff. On the 20th of April 1872 M sold the equity of redemption to the defendant's father, who became the purchaser without cancelling his first mortgage. The plaintiff subsequently sued M to enforce his *san-mortgage*, and, obtaining a decree, placed an attachment on the house, which attachment, however, was removed on the application of the defendant's father. The plaintiff now sued to establish his right to levy the amount due on his *san-mortgage*. He claimed priority to the defendant on the authority of *Toulmin v. Steere*, 3 *Mer.*, 210, where it was held that a purchaser of the equity of redemption could not set up a prior mortgage of his own against subsequent incumbrances of which he had notice. *Held* that, the intention of the defendant's father when purchasing the equity of redemption having been to retain the benefit of all redemption having been to retain the benefit of all his rights, his son, the defendant, might properly require the redemption of his first mortgage as the condition of the plaintiff's enforcing the decree upon his mortgage against the property. A mortgagee purchasing the equity of redemption may indicate his intention to keep his charge upon the property alive

MORTGAGE—continued.**5. SALE OF MORTGAGED PROPERTY**
—continued.

otherwise than by express words. *Per* WEST, J.—The successive charges created by the owner of an estate may be regarded as fractions of the ownership, which embraces the aggregate of advantages that can be drawn from it. Each charge in its turn constitutes a deduction from the original aggregate, and the nominal ownership may itself then be reduced to a small fraction of what it once was. Still, be it small or great, it is a possible object of sale or purchase, and there is no ground or reason for saying that an incumbrancer who is already owner of one fraction of the property may not buy this other fraction without forfeiting the former fraction in favour of other fractional owners in the remainder left after deduction of his prior share. **MULCHAND KUBER v. LALLU TRIKAM** *I. L. R.*, 6 *Bom.*, 404

246. — — — — — *Revival of lien—Priority of lien among mortgagees.*—Where an estate had been mortgaged in 1863, and a second mortgage to the same person in 1867 had resulted in a re-adjustment of the old debt, under which the old mortgage had determined, but the original relations between mortgagor and mortgagee had been renewed; and where a fresh lien had been created on the same property by a new mortgage in 1864 to a third person, who also entered upon possession of the said property on a *zur-i-peshgi* lease, and who, on the sale of the property, sought to set aside the lien of the first mortgagee,—*Held* that the first and second mortgagees were entitled to priority in the following order: first, the first mortgagee for the amount outstanding from the first mortgage of 1863, and revived in the second mortgage of 1867; second, the second mortgagee for the amount stipulated in the mortgage of 1864; third, the first mortgagee for the residue (if any) after satisfying the above-mentioned claim of first mortgagee; fourth and lastly, the second mortgagee for any residue. *Held* also that, having failed to call for restricted proof of the fairness of the first mortgagee's claims in the Court below, the second mortgagee could not urge in appeal that fair consideration had not been received. *Held* also that the second mortgagee, having enjoyed possession of the estate under the *zur-i-peshgi* lease, was not entitled to interest on the amount decreed. **WOSBEUN v. BYJNATH SINGH** 25 *W. R.*, 171

247. — — — — — *Possession under mortgage—Priority of mortgagee with possession.*—As a general rule, by Hindu law, a mortgagee in possession is entitled to have his claim satisfied in preference to the claim of the holder of a mortgage of prior date unaccompanied by possession. **HARI RAMCHANDRA v. MAHADAJI VISHNU** [*8 Bom.*, *A. C.*, 50

KRISHNAPPA VALAD MAHADAPPA v. BAHIRU YADHAYRAY 8 *Bom.*, *A. C.*, 55

There are cases, however, which the Courts treat as exceptions to that general rule. Thus, where a prior mortgagee sued to recover possession of certain mortgaged premises from the mortgagor, and before

MORTGAGE—continued.**5. SALE OF MORTGAGED PROPERTY**
—continued.

judgment was given in that suit a subsequent mortgage filed another suit against the mortgagor and obtained judgment, under which possession was made over to him (the subsequent mortgagee), it was held that possession so obtained pending the earlier suit would not avail to give the subsequent mortgagee priority over the prior mortgagee. *Kaish-Nappa Valad Mahadappa v. Bahiru Yadavray* (8 Bom, A C, 55)

248. ———— *Registration of mortgage-deed*—A mortgage deed s, when registered, valid without possession. *BALAJI NARAYAN KOLATKAR v. RAMCHANDRA GANESH KELKAR* (11 Bom, 37)

249. ———— *Law in Guzerat—Rights of prior and pious mortgages—Purchaser of equity of redemption with notice of incumbrances*—The rule of Hindu law that a mortgage with ~~notice~~ on takes precedence of a mortgage of a

incumbrance, stands in the same situation, as regards such subsequent incumbrances, as if he had been himself the mortgagor he cannot set up against such subsequent incumbrances either a prior mortgage of his own or a mortgage which he or the mortgagor may have got in. *ITCHARAM DAYARAM v. RAJJI JAGA* . . . 11 Bom, 41

250. ———— *Subsequent purchase*—The mortgagee without possession of certain

having notice of it should not be allowed to hold the premises free from the mortgage. *GOPAL YADAVRAY KESKAR v. KRISHNAPPA DIN MAHADAPPA* (7 Bom., A. C, 60)

See *CHINTAMAN BHASKAR v. SHIVRAM HARI* (9 Bom, 304)

251. ———— *Purchase by mortgagee—Priority*—Held that a mortgagee in

MORTGAGE—continued**5. SALE OF MORTGAGED PROPERTY**
—continued.

possession, who also became purchaser of the property for the amount secured by the mortgage under a deed of sale which was neither stamped nor registered, could fall back upon his mortgage and recover the amount thereof, in preference to a subsequent purchaser of the same property whose deed of sale was both stamped and registered. *HIRACHAND BABAJI v. BHASKAR ARABHAT SHENDE* . 2 Bom., 198

252. ———— *Possession of title-deeds—Priority—Rights of second mortgagees.*—The mere possession of the title-deeds by a second mortgagee, though a purchaser for value without notice, will not give him priority. There must be some act or default of the first mortgagee to have this effect. *SOMASUNDARA TAMBIRAN v. SAKKARAI PATTAN* . . . 4 Mad, 369

253 ———— *Decree for*
was neither registered nor accompanied with possession. Defendant claimed under a mortgage, dated the 17th March 1873, for Rs150, which was both registered and accompanied with possession. Defendant had no notice, express or constructive, of the plaintiff's previous mortgage. In 1873 plaintiff sued the mortgagor for a money claim unconnected with the mortgage and on the 20th February 1874 obtained a

1874 An unregistered certificate of the Court's

appear in evidence) for possession of the mortgaged property against the mortgagor. In endeavouring to enforce that decree, plaintiff was obstructed by defendant on the 15th January 1875. Held that, if it was passed subsequent to the Court's sale of the mortgaged property to defendant on the 17th September 1874, the decree for possession was valueless, as neither the title to, nor the possession of, the mortgaged property was then vested in the mortgagor. Held further that, as defendant had no notice of the plaintiff's mortgage when plaintiff caused the Court's sale to be made under his money-decree, or that the sale was made subject to the plaintiff's mortgage, it was incumbent on plaintiff, as such money judgment-creditor, to inform defendant, when bidding for the right, title, and interest of the judg-

omitted so to inform the defendant, was stopped from enforcing his own mortgage against the defendant. *ITCHARAM DAYARAM v. RAJJI JAGA*, 11 Bom,

MORTGAGE—continued.**5. SALE OF MORTGAGED PROPERTY**
—continued.

Bom., 224, referred to and followed. **DESAI LALLU-
BHAI JETHABHAI v. MUNDAS KUBERDAS**

[*I. L. R.*, 20 *Bom.*, 390

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[*I. L. R.*, 7 *Mad.*, 127

244. ———— *Bond fide purchase of property subject to mortgage without notice.*—A, after mortgaging his property to B, conveyed it by sale as unincumbered to C, who took proceedings against the mortgagor, A, and obtained a decree for possession. Meantime B brought a suit upon his mortgage, and obtained a decree under which he sold the property to D. B then sued D for possession. *Held* that the Judge was right in finding that the defendant, being a *bond fide* purchaser for value without notice, was entitled to hold the property as against the plaintiff. **MAHOMED ASHERUF v. KUREEM-
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245. ———— *Purchase of equity of redemption by first mortgagee—Priority—Notice—Merger.*—On the 20th of August 1870 M, the owner of a house in Gujarat, mortgaged it to the defendant's father with possession. On the 2nd of December 1871 he made a *san-mortgage* of the same house to the plaintiff. On the 20th of April 1872 M sold the equity of redemption to the defendant's father, who became the purchaser without cancelling his first mortgage. The plaintiff subsequently sued M to enforce his *san-mortgage*, and, obtaining a decree, placed an attachment on the house, which attachment, however, was removed on the application of the defendant's father. The plaintiff now sued to establish his right to levy the amount due on his *san-mortgage*. He claimed priority to the defendant on the authority of *Toulmin v. Teere*, 3 *Mer.*, 210, where it was held that a purchaser of the equity of redemption could not set up a prior mortgage of his own against subsequent incumbrances of which he had notice. *Held* that, the intention of the defendant's father when purchasing the equity of redemption having been to retain the benefit of all his rights, his son, the defendant, might properly require the redemption of his first mortgage as the condition of the plaintiff's enforcing the decree upon his mortgage against the property. A mortgagee purchasing the equity of redemption may indicate his intention to keep his charge upon the property alive

MORTGAGE—continued.**5. SALE OF MORTGAGED PROPERTY**
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[8 *Bom.*, A. C., 50

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MORTGAGE—continued**5 SALE OF MORTGAGED PROPERTY**
—continued

that

[L. R., 20 Bom., 280

258 ————— Mortgage, pur-

brought a suit upon the mort-

of title.—*Held* that, inasmuch as the plaintiffs were not made parties to the mortgage suit, the mortgage decree was not binding upon them but at the same time the plaintiffs did not acquire by the pur-

259 ————— Suit for recovery of possession by the purchaser of the equity of redemption who is not a party to the mortgage suit, whether maintainable.—Where the plaintiff purchased a mortgaged property from the mortgagor, and subsequently the mortgagor brought a suit against the plaintiff mortgagor without making the purchaser a party, and in execution of the mortgage decree

Property GRISH CHUNDER MENDUL & ISWAR CHUNDER RAI 4 C W N, 452

230 ————— Purchase of mortgaged property.—Parties.—Right of purchase to possession.—Right of redemption.—Plaintiffs are the representatives of one H in whose favour defendants 1 to 4 and one A, ancestor of defendants 8 to 10, executed a mortgage-bond on the 4th August 1882, defendant No 16 is the mortgagee under a bond executed by the same persons on the 3rd June 1883, the money borrowed on this bond was partly employed in paying off a prior bond executed by the same persons in favour of H on the 11th November 1878. Defendants 17 and 18 are the assignees under another bond executed by A on the 22nd September 1882. The 1st bond, 1878, was sued on and the decree obtained on the

MORTGAGE—continued,**5 SALE OF MORTGAGED PROPERTY**
—continued

31st October 1881. The decree on the plaintiffs' bond

of the 4th bond, was dated the 13th February 1894

of September 1882 and June 1883, inasmuch as they were sued as subsequent, instead of prior, mortgagees, and that they were called on to redeem which they were not bound to do. DHARTI & LASHAM DEO PARSHAD

[4 C W N, 297

261. ————— Purchaser of property mortgaged from grantee of mortgagor.—Decree and sale by mortgagee.—Auction-purchaser.—Priority of latter over purchaser from grantee of mortgagor.—In the year 1869 A mortgaged her share in a zamindari to B. In 1870 she granted a

not a party) on his mortgage-bond and obtained a decree for the sale of the mortgaged property. At

of the sale and that he was therefore entitled to a decree declaring that he was no longer liable to pay rent to F. MUTHORA NATH PAL & CHANDERMONY DABIA

L. L. R., 4 Cal., 817

262. ————— Purchaser, Assignee of.—Ejectment by assignee of purchaser at sale in execution of decree against prior mortgagee.—Rights

MORTGAGE—continued.**5. SALE OF MORTGAGED PROPERTY**
—continued.

41, distinguished. **TUKARAM BIN ATMARAM v. RAMACHANDRA BUDHARAM I. L. R., 1 Bom., 314**

254.

Mortgage without title—Priority of mortgagee's right.—*P* and his partners mortgaged certain immoveable property to plaintiff on the 11th October 1869. They had then no title to the property, but they subsequently acquired one by purchase on the 29th June 1871. On plaintiff demanding that *P* and his partners should make good the contract of mortgage out of the interest they had acquired, the matter was referred to arbitrators, who, on the 26th December 1873, made an award empowering plaintiff to sell the mortgaged property in satisfaction of his debt. The award was presented in Court by plaintiff on the 23rd January 1874, and was filed by the Court on the 23rd February 1874. Meanwhile on the 14th February 1874 the property was attached in execution of a money-decree obtained by a creditor of *P* and his partners against them. On the 15th April 1874 it was sold by auction and purchased by defendant. In a suit brought by plaintiff to recover possession of the property, both the lower Courts rejected his claim, on the ground that *P* and his partners had no right to the property when they mortgaged it to plaintiff. *Held* by the High Court on second appeal, reversing the decrees of the lower Court, that the defendant, as purchaser under a money-decree, could not defeat the plaintiff's right as mortgagee to sell the property in satisfaction of his debt. **PRANJIVAN GOVARDHONDAS v. BAJU I. L. R., 4 Bom., 34**

255.

Mortgage of property already sold in execution—Subsequent mortgagee with notice of previous sale—Assignment—Rejection of application under s. 269 of Act VIII of 1859—Suit within one year.—On the 17th October 1866, *K* (defendant No. 1), one of the three sons of *B*, mortgaged certain immoveable property to one *N* with possession. On the 19th December 1866, *A* (plaintiff No. 1) obtained a money-decree against *K* and the estate of his deceased father. In execution of that decree, the property was sold by the Court and purchased by *A* himself, who obtained a certificate of sale, dated the 30th January 1868. He subsequently sold and conveyed the property to *D* and *C* (plaintiffs Nos. 2 and 3). On applying to the Court for possession, the plaintiffs were resisted by *N*. The Court rejected the plaintiffs' application on the 11th July 1868. On the 31st May 1871, *K* and his two brothers mortgaged the property to *M* (defendant No. 2), who took the mortgage with full notice of the Court-ale to the plaintiff *A*. *K* and his brothers paid off the mortgage of *N* out of the money borrowed by them from *M* (defendant No. 2) on the mortgage of the property. *N* returned his mortgage-deed to *K* and his brothers, who made it over to *M*. In 1878 the plaintiffs brought a suit against *K* and *M* for possession of the property. The Subordinate Judge held the plaintiffs entitled to recover it, on payment of the amount due to *M* on his mortgage, being of opinion that *M* was in the same position as *N*. On appeal, the District Judge dismissed the plaintiffs'

MORTGAGE—continued.**5. SALE OF MORTGAGED PROPERTY**
—continued.

suit on the ground that it was not brought within one year from the date when the application for possession was rejected. On appeal to the High Court.—*Held* that the mortgage by *K* and his brothers to *M*, dated the 31st May 1871, was a mortgage of property which did not then belong to them,—their estate and interest in it having passed to the plaintiff *A* at the Court-sale. *Held* also that the order of the 11th July 1868, rejecting the plaintiff's application for possession under s. 269 of the Civil Procedure Code (Act VIII of 1859), did not affect the right to bring a redemption suit against *N*. *Held* further that there was nothing to show any assignment, by *N*, of his mortgage, or any intention on his part to assign it to *M*, or to keep it on foot for *M*'s benefit. The High Court accordingly reversed the decree of the Courts below, and made a decree in favour of the plaintiffs. **APAJI BHUVRAV v. KAVJI I. L. R., 6 Bom., 61**

256.

Right to redeem—Parties—Registration Act, XX of 1866, s. 50—Priority—Notice of prior unregistered mortgage.—On the 24th September 1869 *G* mortgaged certain land to *H*. Subsequently, on the 14th June 1870, he mortgaged the same land to *P*. Both the mortgages were for sums less than Rs. 100. The mortgage to *H* was unregistered, but the subsequent mortgage to *P* was registered. On the 21st June 1873, in a suit to which *P* was not a party, *H* obtained a decree on his mortgage, and at the execution sale he himself became the purchaser, and was put into possession of the land under his certificate of sale. On the 21st September 1874, *P* assigned his mortgage to the plaintiff. The deed of assignment was not registered; neither *P* nor his assignee, the plaintiff, ever had possession under the mortgage of 1870. The plaintiff brought this suit to obtain possession of the land. Both the lower Courts dismissed the plaintiff's claim. On special appeal to the High Court.—*Held* that, in order to bind *P* by the decree passed in 1873 and thus make a good title to the purchaser under that decree, *H* should have made *P* a party to his suit, thereby giving *P* an opportunity of redeeming *H*'s mortgage. *H* having neglected to do this, the plaintiff in the present suit, as the assignee of the right, and equities of *P*, was entitled to redeem the mortgage of *H* in case it was proved that *P* had notice of that mortgage. **SHIVRAM v. GENU I. L. R., 6 Bom., 515**

See **NARAN PURSHOTAM v. DALATRAM VIRCHAND I. L. R., 6 Bom., 538**

257.

Registration—Notice—Sale of mortgaged property in execution of a money-decree without express notice of mortgage—Right of mortgagee to enforce mortgage against the property in hands of purchaser—Civil Procedure Code, 1882, s. 257.—A mortgagee under a registered mortgage-deed obtained a money-decree against the mortgagors in some matter other than the mortgage, and sold the mortgaged property in execution of the decree. The mortgage lien was not announced in the proclamation of sale as required by s. 257 of the Civil Procedure Code (Act XIV of 1882), and the auction-

MORTGAGE—continued.**5. SALE OF MORTGAGED PROPERTY***—continued*

purchaser had no actual knowledge of the mortgage. In a suit brought by the mortgagor against the mortgagees and the auction purchaser to recover the mortgage-debt by sale of the mortgaged property.—*Held* that, except in a case of fraudulent concealment, the

[L. R., 20 Bom., 280]

258

Mortgage, purchase of the equity of redemption—Suit for confirmation of possession and declaration of title, whether maintainable by such purchaser—Parties—Purchaser from a mortgagor, whether bound by a decree passed in his absence Defendant No. 4, after having mortgaged a certain property to defendants Nos. 1 and 2, sold the same to the plaintiffs, subsequently defendants Nos. 1 and 2, although aware of plaintiffs' purchase, brought a suit upon the mortgage-bond against defendant No. 4 only without making the plaintiffs a party, and after having obtained a decree sold the property in execution thereof and purchased it themselves. In a suit by the plaintiffs for confirmation of possession and declaration of title.—*Held* that, inasmuch as the plaintiffs were not made parties to the mortgage suit, the mortgage-decree was not binding upon them, but at the same time the plaintiffs did not acquire by the purchase any other right than to redeem the mortgage, and that the plaintiffs were not entitled to the decree prayed for by them. **PROTAP CHANDRA MANDAL v. ISHAN CHANDRA CHOWDHRY** 4 C. W. N., 268

259

Suit for recovery of possession by the purchaser of the equity of redemption who is not a party to the mortgage suit, whether maintainable—Where the plaintiff pur-

auction-purchaser rejected the plaintiff.—*Held* that the plaintiff was not bound by the mortgage-decree, and he was entitled to recover possession of the mortgaged property. **GRISH CHANDER MENDAL v. ISHAN CHANDER RAI** 4 C. W. N., 452

260

Purchase of mortgaged property—Parties—Right of mortgagee to possession—Right of redemption—Plaintiffs are the representatives of one H in whose favour defendants 1 to 4 and one K, ancestor of defendants 5 to 10, executed a mortgage-bond on the 4th August 1832, defendant No. 16 is the mortgagee under a bond executed by the same persons on the 3rd June 1833, the money borrowed on this bond was partly employed in paying off a prior bond executed by the same persons in favour of H on the 11th November 1878. Defendants 17 and 18 are the assignees under another bond executed by K on the 22nd September 1832. The 1st bond, 1878, was sued on and the decree obtained on the

MORTGAGE—continued.**5. SALE OF MORTGAGED PROPERTY***—continued.*

31st October 1851. The decree on the plaintiffs' bond was obtained on the 31st July 1853, the decree on defendant No. 16's bond was obtained on the 19th February 1891, the sale certificate obtained by the defendants 25, 33 and another person H, who were the purchasers at the sale in execution of the decree on account of the 4th bond, was dated the 13th February 1894. Plaintiffs purchased the mortgaged properties at the sale held in execution of their decree on the 2nd June 1884, and the plaintiffs took symbolical possession on the 16th October 1884, defendant No. 16 purchased the property in execution of her decree on the 29th February 1892. Plaintiffs now brought the present suit for possession, or in the alternative for possession after the defendants have had an opportunity of redeeming the property. *Held* that the decree obtained by the plaintiffs on the 31st July 1853 and their subsequent purchase could not affect the defendants, but the fact of their omitting to make them parties to their suit did not extinguish their right. That by the purchase of the rights of the mortgagor the plaintiffs acquired the ownership of the property, subject to the incumbrances existing in favour of the defendants, and they are entitled to possession subject to the defendants' rights of redemption. The plaintiffs did not lose their right to possession, although they were parties to the suits brought upon the bonds of September 1852 and June 1853, inasmuch as they were sued as subsequent, instead of prior, mortgagees, and that they were called on to redeem which they were not bound to do. **DHAPU v. ISHAM DEO PARSAD**

[4 C. W. N., 297]

261

*Purchaser of property mortgaged from grantee of mortgagor—Decree and sale by mortgagee—Auction-purchaser—Priority of latter over purchaser from grantee of mortgagor.—In the year 1863 A mortgaged her share in a zamindari to B. In 1870 she granted a patti lease of the property to C, who transferred it to D. Subsequently, A made a gift of the property to E, and in 1872 E sold the land so given to F, who thus became the owner of the patti and zamindari rights of the property formerly belonging to A. In 1873 B brought a suit against F (to which F was not a party) on his mortgage-bond, and obtained a decree for the sale of the mortgaged property. At the sale the property was purchased by G (the son of D). F then brought a suit for rent against G and obtained a decree. G then brought a suit against F to have it declared that he was no longer liable to pay rent, and to establish his zamindari rights, claiming a refund of the money paid under the rent-decree. *Held* that G had bought the entire interest which A and B could jointly sell, and not merely the right and interests of A as they stood at the time of the sale, and that he was therefore entitled to a decree declaring that he was no longer liable to pay rent to F. **MUTHORA NATH PAL v. CHAKRABORTY DASIA** L. L. R., 4 Calc., 817*

262

Purchaser, Assignee of—Ejectment by assignee of purchaser at sale in execution of decree against puisne mortgagee—Rights

MORTGAGE—continued.

5. SALE OF MORTGAGED PROPERTY

—continued.

41, distinguished. **TUKARAM BIN ATMARAM v. RAMACHANDRA BUDHARAM I. L. R., 1 Bom., 314**

254. —

*Mortgage with-
out title—Priority of mortgagee's right.*—P and his partners mortgaged certain immovable property to plaintiff on the 11th October 1869. They had then no title to the property, but they subsequently acquired one by purchase on the 29th June 1871. On plaintiff demanding that P and his partners should make good the contract of mortgage out of the interest they had acquired, the matter was referred to arbitrators, who, on the 26th December 1873, made an award empowering plaintiff to sell the mortgaged property in satisfaction of his debt. The award was presented in Court by plaintiff on the 23rd January 1874, and was filed by the Court on the 23rd February 1874. Meanwhile on the 14th February 1874 the property was attached in execution of a money-decree obtained by a creditor of P and his partners against them. On the 15th April 1874 it was sold by auction and purchased by defendant. In a suit brought by plaintiff to recover possession of the property, both the lower Courts rejected his claim, on the ground that P and his partners had no right to the property when they mortgaged it to plaintiff. *Held* by the High Court on second appeal, reversing the decrees of the lower Court, that the defendant, as purchaser under a money-decree, could not defeat the plaintiff's right as mortgagee to sell the property in satisfaction of his debt. **PRANJIVAN GOVARDHONDAS v. BAJU I. L. R., 4 Bom., 34**

255. —

Mortgage of property already sold in execution—Subsequent mortgagee with notice of previous sale—Assignment—Rejection of application under s. 269 of Act VIII of 1859—Suit within one year.—On the 17th October 1866, K (defendant No. 1), one of the three sons of B, mortgaged certain immovable property to A (plaintiff No. 1) obtained a money-decree against K and the estate of his deceased father. In execution of that decree, the property was sold by the Court and purchased by A himself, who obtained a certificate of sale, dated the 30th January 1868. He subsequently sold and conveyed the property to D and C (plaintiffs Nos. 2 and 3). On applying to D and C for possession, the plaintiffs were resisted by N. The Court rejected the plaintiffs' application on the 11th July 1868. On the 31st May 1871, K and his two brothers mortgaged the property to M (defendant No. 2), and the mortgage with full notice of the Court-sale to the plaintiff A. K and his brothers paid off the mortgage of N out of the money borrowed by them from M (defendant No. 2) on the mortgage of the property. N returned his mortgage-deed to K and his brothers, who made it over to M. In 1878 the plaintiffs brought a suit against K and M for possession of the property. The Subordinate Judge held the plaintiffs entitled to recover it, on payment of the amount due to M on his mortgage, being of opinion that M was in the same position as N. On appeal, the District Judge dismissed the plaintiffs'

DIGEST OF CASES.

MORTGAGE—continued.

5. SALE OF MORTGAGED PROPERTY

—continued.

suit on the ground that it was not brought within one year from the date when the application for redemption was rejected. On appeal to the High Court, *Held* that the mortgage by K and his brothers to M, dated the 31st May 1871, was a mortgage of property which did not then belong to them, their estate and interest in it having passed to the plaintiff A at the Court-sale. *Held* also that the order of the 11th July 1868, rejecting the plaintiffs' application for possession under s. 269 of the Civil Procedure Code (Act VIII of 1859), did not affect the right to bring a redemption suit against N. *Held* further that there was nothing to show any assignment, by N, of his mortgage, or any intention on his part to assign it to M, or to keep it on foot for M's benefit. The High Court accordingly reversed the decree of the Courts below, and made a decree in favour of the plaintiffs. **APAJI BHIVRAV v. KAVJI I. L. R., 6 Bom., 64**

256. —

Parties—Registration Act, XX of 1866, s. 50—Priority—Notice of prior unregistered mortgage.—On the 24th September 1869 G mortgaged certain land to H. Subsequently, on the 14th June 1870, H mortgaged the same land to P. Both the mortgage were for sums less than Rs. 100. The mortgage to P was unregistered, but the subsequent mortgage to H was registered. On the 21st June 1873, in a suit to which P was not a party, H obtained a decree on his mortgage, and at the execution sale he himself became the purchaser, and was put into possession of the land under his certificate of sale. On the 21st September 1874, P assigned his mortgage to the plaintiff, nor his assignee, the plaintiff, ever had possession under the mortgage of 1870. The plaintiff brought this suit to obtain possession of the land. Both the lower Courts dismissed the plaintiff's claim. On special appeal to the High Court, *Held* that, in order to bind P by the decree passed in 1873 and thus make a good title to the purchaser under that decree, H should have made P a party to his suit, thereby giving P an opportunity of redeeming H's mortgage. H having neglected to do this, the plaintiff in the present suit, as the assignee of the rights and equities of P, was entitled to redeem the mortgage of H in case it was proved that P had notice of that mortgage. **SHIVRAM v. GENU I. L. R., 6 Bom., 515**

See NARAN PURSHOTAM v. DALATRAM VIRCHAND I. L. R., 6 Bom., 538

257. —

Notice—Sale of mortgaged property in execution of a money-decree without express notice of the mortgagee to the purchaser—Right of mortgagee to enforce mortgage against the property in hands of purchaser—Civil Procedure Code, 1882, s. 287.—A mortgagee under a registered mortgage-deed obtained a money-decree against the mortgagors in some matter other than the mortgage, and sold the mortgaged property in execution of the decree. The mortgage lien was not announced in the proclamation of sale as required by s. 287 of the Civil Procedure Code (Act XIV of 1882).

MORTGAGE—continued.**5 SALE OF MORTGAGED PROPERTY***—continued.*

the mortgages, had only an inchoate title and the purchasers in execution had no notice of the plaintiff's incip

far :
not
who failed to assert their dormant right. Had the plaintiffs got into possession or obtained a certificate and registered, there would have been notice

DEFA : HEMAPA

I. L. R., 10 Bom., 10

265.

San-mortgage

Mortgage with possession—Sale in execution of decree obtained by first mortgagee—Purchase by
at such sale—Suit by purchaser

property at the Court

estate of at the date of his mortgage

entitled to reclaim the property in the case of
MOHAN MANOH v. TOGU UKA

[I. L. R., 10 Bom., 324

tion; but by arrangement between the parties the mortgagees remained in possession, the right of the mortgagee to obtain possession as against them

MORTGAGE—continued**5. SALE OF MORTGAGED PROPERTY***—concluded.*

legal title, had no applicability in the Courts of British India. *Held*, under these circumstances, that there was no equitable ground why the plaintiff's right under the mortgage, which had priority, should be defeated by the defendant's purchase. *DEGHA PRASAD v. SHAMBHU NATH* I L R., 8 All., 86

G. MARSHALLING

to his debtor, and a third party, having obtained a decree for money due from the same debtor, recovered his money by the sale of one of the three estates mortgaged to the plaintiff. *Held* that the sale did not release that estate from the mortgage, but that it forced the plaintiff to take measures in the first place to recover the amount due to him from the remaining estates included in his mortgage-deed; and that, if a balance remained after he had realized all he could from these two remaining estates, he could then return to the third estate to recover the balance. *NOWA KOOWAR v. ABDUL RUGHFAM*

[W. R., 1884, 374

288.

Charge on several properties—In a suit to establish a claim

trolling his remedies. *Quere*—Should the doctrine of marshalling of securities be introduced into this country? *KHETOOSER CHEROORIA v. BANER MADHUB DOSS* 12 W. R., 114

289.—

Charge on several properties.—*Per* DETON-KAAR, J.—Case remanded for the lower Court to find whether, when property hypothecated for a loan has passed to a bona fide purchaser, the same can be declared liable to satisfy each part of a money-decree on the loan as cannot

MORTGAGE—continued.**5. SALE OF MORTGAGED PROPERTY**
—continued.

of parties.—Where immoveable property mortgaged has been sold by a Court in execution of a decree obtained by the mortgagee to enforce his lien against the mortgagor, a puisne mortgagee who has not been made a party to the suit is not bound by the decree or sale, and is entitled to redeem the first mortgage. The assignee of the purchaser of land sold in execution of a mortgage-decree obtained by a mortgagee in a suit against the mortgagor alone is not entitled to eject a puisne mortgagee; but where such a suit is brought and the puisne mortgagee does not object to a decree ordering him to pay the amount realized at the Court-sale within a certain time, or else to deliver up possession to the plaintiff and be for ever foreclosed, he is entitled, on payment of the sum decreed, to retain possession as mortgagee both in respect of his original debt and of the sum required to be paid by him for its protection. The ruling in *Muthora Nath Pal v. Chundermoney Dabla*, *I. L. R.*, 4 Cal., 817; and dictum of WEST, J., in *Shringarpure v. Pethe*, *I. L. R.*, 2 Bom., 663, dissented from. VENKATA v. KANNAM. . . . *I. L. R.*, 5 Mad., 184

263. ——— Suit by purchaser for possession—Priority—Equity of redemption—Registration—Notice—Parties to suit brought by a first mortgagee—Practice—Amendment of plaint.—A, the owner of certain land, mortgaged it to S for ten years for Rs. 500 by a deed dated the 27th November 1867. The deed was registered, but S was not put into possession of the mortgaged land. On the 17th January 1868, A mortgaged the same land to the defendant R for Rs. 250. The mortgage-deed was registered in May 1868, and recited that the mortgagee (defendant) was put in possession. The lower Courts found as a fact that the defendant had obtained possession of the mortgaged property. S sued A on her mortgage, and obtained a decree against him, dated the 8th December 1869, directing satisfaction of the mortgage-debt by the sale of the mortgaged property. The defendant was not a party to that suit. On the 10th March 1870 the land was sold in execution of that decree, and purchased by the plaintiff for Rs. 99-12, with notice of the defendant's mortgage. On the 28th April 1870 the defendant R instituted a suit in ejectment against N (the mother of A), who was in occupation of the land as tenant and had failed to pay the rent. On the 7th July 1870 the plaintiff, as purchaser at the above-mentioned sale, was put into possession, but on the 24th August 1870 the defendant obtained a decree in ejectment against N (the mother of A) as her tenant. In execution of that decree, the defendant recovered possession of the land, dispossessing the plaintiff, though he had not been a party to the ejectment suit. The plaintiff thereupon brought the present suit to recover the land under s. 230 of Act VIII of 1859. His claim was rejected by the Subordinate Judge, but allowed by the Joint Judge in appeal. On special appeal to the High Court.—Held that the claim of S against the land was prior to that of the defendant, inasmuch as her mortgage was prior in date to the defendant's mortgage, and was registered. S

MORTGAGE—continued.**5. SALE OF MORTGAGED PROPERTY**
—continued.

had a right to maintain a suit for the sale of land to satisfy her mortgage, but she ought to have made the defendant (as subsequent mortgagee) a party to it, inasmuch as the equity of redemption was vested in the defendant to the extent of her (defendant's) mortgage, and she (defendant) would have been entitled to redeem the land by payment of the amount which might have been found due to S in her suit. The defendant being in possession of the land at the time of the institution of the suit of S, and her (defendant's) mortgage being registered, S must be regarded as having had notice of the defendant's claim, and was bound to make defendant a party to that suit in order to give a good title to a purchaser under such decree as might be made in that suit. S, by her omission to do so, did not afford to the defendant the opportunity of redeeming to which the defendant was entitled. The plaintiff, notwithstanding notice of the defendant's claim, became the purchaser, although the defendant was not a party to the suit of S, and therefore not bound by the decree in it. The plaintiff accordingly was fully aware of the infirmity of the title which he was acquiring. No doubt, the decree in the suit of S bound the mortgagor A, who was a party to it, so far as his right to redeem was concerned. The plaintiff therefore had a good title to the interest of A, and was entitled to redeem the land from the defendant's mortgage. The utmost relief which the Court could afford to the plaintiff under the above circumstances was to permit him to amend his plaint by praying a redemption of the land from the defendant's mortgage, and to treat his suit, which was in the nature of an ejectment suit, as one for redemption. The High Court accordingly reversed the decree of the Joint Judge, and made a decree for an account on the defendant's mortgage, allowing the plaintiff to redeem within a certain time on payment of the balance that might be found due to the defendant, or, in default, ordering the plaintiff to be for ever foreclosed from recovering the land. *Itcharam Dayaram v. Rajji Jaga*, 11 Bom., 41, and *Shringarpure v. Pethe*, *I. L. R.*, 2 Bom., 633, referred to and followed. RADHABAI v. SHAMRAV VINAYAK

[*I. L. R.*, 8 Bom., 188

264. ——— Execution—Sale of equity of redemption—Purchaser at execution-sale—Sale in execution of decrees on mortgage prior in date—Priority—Possession—Notice—Certificate of sale.—On the 18th January 1877 the father of the plaintiffs purchased the interest of M in two houses at a sale in execution of a money-decree against M. The purchaser, however, never obtained possession, and he did not obtain the certificate of sale until the 31st July 1878. Subsequently to the sale of the 18th January 1877, two suits were filed against M on mortgages executed prior to that date and decrees in both were obtained against M. In execution of these decrees, both the houses were sold and the respective purchasers were represented by two of the defendants. The purchasers got possession and both obtained sale-certificates, one prior to the sale to

MORTGAGE—continued.**G. MARSHALLING—continued.**

when he has become owner of the equity of redemption in part. The proper course is to make an enquiry into the relative values of the properties included in the mortgage and to burden each with a proportionate share of the debt. It must not be assumed that the Government assessment represents the true value of estates. **HISHEN PERTAB SAREE BAHADOOR v LALLA NUND COOMAR SINGH PARRAY** [25 W. R., 388]

277. ————— *Charges on mortgages of different shares of same property—Priority—Form of decree—In certain lands A*

entire estate, the amount of the purchase money being more than sufficient to pay off the first and second mortgages. *Held* that the appellant was entitled to have an apportionment of the amounts covered

GUNGA NARAIN SEV v HURRISH CHUNDER CHANGDARS 6 C. L. R., 338

278. ————— *Apportionment prejudicing third parties—Transfer of Property Act (I) of 1882, s. 81—The principle of marshalling cannot be exercised to the prejudice of third parties. **Burnes v Rascals**, 1 L. J. C. C. C. 401, and **Bugden v Bignold**, 2 L. J. C. C. C. 377, followed. S. 81 of the Transfer of Property Act is applicable only where the second mortgagee has no notice of the prior mortgage. The principle of apportionment laid down in **Gunga Narain Sev v Hurrish Chunder Changdars**, 6 C. L. R., 338, referred to. **SATISH CHUNDER WUKERJI v GOPAL CHUNDER CHUCKERBUTTY** 2 C. W. N., 397*

279. ————— *Charges on several properties—It appearing that the mortgagee deliberately abstained from executing his decree against eleven properties which still remained in the possession of the mortgagor, but proceeded against the one property which had passed out of the mortgagor's possession, the mortgage-debt was directed to be apportioned between the 12 properties, and the mortgagee was not to be allowed to take out execution against the property which had passed out of the*

the other eleven properties. **RAM DHUN DUTTA v MOHESH CHUNDER CHOWDHRY**

[L. L. R., 6 Cal., 408. 11 C. L. R., 585]

280. ————— *Charges on separate mortgaged properties—One of two mortgagors on a mortgage of which A had obtained a decree with an order for sale of the mortgaged properties*

MORTGAGE—continued**G. MARSHALLING—continued**

[4 C. L. R., 294]

YACOB ALI CHOWDHRY v RAM DOOLAL

[13 C. L. R., 273]

281. ————— *By a mortgage-*

party jointly mortgaged by S. and T. fell, along with other property, to the share of T. and the third brother A. In 1881 the plaintiff B sued S on the second of the above mortgages viz, that of the 26th July 1878. He obtained a decree, and at the sale held in execution of that decree himself purchased the property comprised in that mortgage. In the meantime on the 27th January 1882 and on the 6th December 1883, T. and A. respectively mortgaged, with possession to the defendant V portions of the land comprised in the first mortgage of the 24th January 1878. In 1883 the plaintiff filed the present suit upon his first mortgage of the 24th January 1878, claiming to recover Rs. 14-0 from S. and T. personally. He also prayed that the defendant V who had been in possession of the property in dispute, should be prevented from obstructing him

upon in execution of the decree obtained by him upon his second mortgage could not now seek to burden the remaining lands included in the mortgage with the whole of the mortgage-debt but that a proportionate part of that debt must be satisfied. *Held* that the plaintiff could not recover the first mortgage-debt from the remaining lands without deducting a proportionate part of that debt. A mortgagee will not be allowed without a special reason deliberately to execute his decree exclusively against one of the owners of the equity of redemption for the whole debt. **Ram Dhan Dhar v Mohesh Chunder Chowdhry**, 1 L. R. 9 Cal., 46, approved. **MEMO RAMNATH v BALAJI TRIMBAK**

[L. L. R., 13 Bom., 46]

282. ————— *Transfer of Property Act, s. 81—Marshalling—Creditors of coparcenary and separate creditors—Suit by the*

MORTGAGE—continued.**6. MARSHALLING—continued.**

be satisfied from any other source. *Per* NORMAN, J.—If *A* has a mortgage on two different estates for the same debt, and *B* has a mortgage on one only of the estates for another debt due from the same party, *B* has a right in equity to throw *A* in the first instance for satisfaction upon the security which he, *B*, cannot touch, where it will not prejudice *A*'s right or improperly control his remedies. A purchaser of one of the estates has the same equity as a mortgagee. *BISHONATH MOOKERJEE v. KISTO MOHUN MOOKERJEE* . . . 7 W. R., 483

270. ————— *Priority—Marshalling of securities—Purchaser for value.*—Where the owner of certain property mortgages it to *A*, and afterwards sells a portion of the mortgaged property to *B*, it is not incumbent on *A* in suing to enforce his mortgage to proceed first against that portion of the property which has not been sold by the mortgagor. *LALA DILAWAR SAKAI v. DEWAN BOLAKIRAM* . . . I. L. R., 11 Cal., 258

271. ————— *Money-decrees—Doctrine of marshalling—Mortgage-decree—Surplus sale-proceeds.*—The doctrine of marshalling does not apply as between a mortgagee and attaching creditors of the mortgagor who hold mere money-decrees. A mortgagee brought a suit against the mortgagor to have a declaration of his lien over the mortgaged properties, and obtained a decree. He afterwards brought another suit against certain attaching creditors of his mortgagor to have a declaration of his lien over certain surplus moneys in the hands of the Collector, who, previously to the institution of the first suit, had sold certain of the mortgaged properties free of all incumbrances for arrears of Government revenue. *He'd* that the mortgage-decree declaring the lien over all the mortgaged properties covered the surplus sale-proceeds then in the hands of the Collector, because these moneys must, as between the mortgagee and attaching creditors of the mortgagor, be taken to represent the mortgaged properties. *Heera Lal Mookerjee v. Janakrenath Mookerjee*, 16 W. R., 222, followed. *KISTODAS KUNDOO v. RAMKANTO ROY CHOWDHRY* [I. L. R., 6 Cal., 142; 7 C. L. R., 336]

272. ————— *Apportionment of debt—Right of mortgagee to sell any portion of his security.*—A mortgagee's right to realize his debt by sale of any portion of the land mortgaged to him cannot be curtailed by the fact that the portion of the land he elects to sell has been sold by the mortgagor subsequent to the date of the mortgage and the purchase-money has been applied to liquidate a prior mortgage on the land sold. *RAMA RAJU v. SUBBARAYUDU* . . . I. L. R., 5 Mad., 387

273. ————— *Purchaser of part of mortgaged property without notice—Suit for sale of whole property in satisfaction of mortgage—Marshalling—Apportionment.*—The equities which apply to a puisne incumbrancer in the marshalling of securities apply also to a *bond fide* purchaser for value, without notice, of a portion of property

MORTGAGE—continued.**6. MARSHALLING—continued.**

the whole of which was subject to a prior incumbrance. *Tulsi Ram v. Munnoo Lal*, 1 W. R., 353; *Nowa Koovar v. Abdool Ruheem*, W. R., 1864, 374; *Bishanath Mookerjee v. Kisto Mohun Mookerjee*, 7 W. R., 483; and *Khetoosee Cherooria v. Banee Madhub Doss*, 12 W. R., 114, referred to. The mortgagees of two properties, one of which had, subsequently to the mortgage, been purchased for value *bond fide* by one who had no notice of the incumbrance, brought a suit to enforce their lien against both the properties originally owned by the mortgagor, impleading as defendants both the mortgagor and the purchaser. *Held* that, while there was no doubt that, if the purchaser was compelled to pay more than the share of the mortgage-debt apportioned on the property purchased by him, he would be entitled to contribution, yet, in a suit so framed and having regard to the array of parties, such an apportionment could not be made at the stage of second appeal. *RODH MAL v. RAM HARAKH* [I. L. R., 7 All., 711]

274. ————— *Right of creditor to realize entire debt from one parcel of land mortgaged.*—*T*, in execution of a money-decree, brought to sale and purchased certain land of *S* in 1875 and remained in possession till 1879. In 1874 *V* obtained a decree against *S*, whereby the lands purchased by *T* and other lands of *S* were declared liable for a mortgage-debt of Rs. 802-8-0. In 1879 *V*, in execution of this decree, attached and brought to sale and purchased the lands in *T*'s possession. *Held* in a suit by *V* to eject *T* that *V* was entitled to recover the lands unless *T* paid the whole of *V*'s decree-debt. *TIMMAPPA v. LAKSHMAMMA* [I. L. R., 5 Mad., 385]

275. ————— *Right to proceed against several properties—Suit on mortgage-bond—Purchase of one property by mortgagee at inadequate price where it was supposed to be subject to mortgage lien.*—In a suit to recover principal and interest on a bond which mortgaged the obligee's share in three villages, *K*, *S*, and *P*, the defence was that plaintiff had paid himself by becoming the purchaser at a sale in execution of another decree of the obligee's rights in *K* at a price inadequate to the fair value. It was found that, at the sale in question, the bids were made on the understanding that the property was burdened with the plaintiff's bond-debt. *Held* that, as plaintiff chose to give out to the world of buyers that he intended to burden the village *K* with the payment of the whole sum due to him, and to his advantage of the lowness of the bids to buy the property himself, he could not now be allowed to proceed against the other properties. *BYJONATH SAROY v. DOOLHUN BISWANATH KOORU* [24 W. R., 83]

276. ————— *Charge on various properties—Mortgagee as purchaser of equity of redemption in part of mortgaged property.*—Property which is the subject of a mortgage when sold in satisfaction must be sold as a whole, and not piecemeal at the pleasure of the mortgagee, especially

MORTGAGE—continued**6 MARSHALLING—continued**

with constructive notice of its existence, and that accordingly the subsequent mortgages to the plaintiff company were entitled to priority. *Held*, on appeal, COLLINS, C J, and HANDLEY, J (1) that the plaintiff company were not affected with constructive notice of the mortgage of the second defendant by reason of its registration or of their failure to search

neglect under the Transfer of Property Act, s 78, apart from the circumstances raising a suspicion of fraud on his part. *Quere*—Whether the case might not have been decided against the second defendant on the ground that his mortgage was merged in the conveyance of 1886. **SHAN MAU NULU v MADRAS BUILDING COMPANY**. I L R, 15 Mad., 268

Affirming the decision in **MADRAS BUILDING COMPANY v ROWLANDSON** I L R, 13 Mad., 383

286 ————— Notice of prior

person with notice of the former mortgage, — *Held* (JARMINE, J, dissenting) such subsequent mortgagee had an equity to call for a marshalling of the securities in his favour so as to require the first mortgagee to proceed to realize his security in the first instance out of the property not mortgaged to the second mortgagee. The English doctrine of marshalling of securities applies to mortgages in the mofussil. **CHUNNIL VITHALDAS v. FULCHAND**, I L R, 18 Bom, 180

287 ————— Transfer of Property Act (IV of 1932), s 81—Notice of mortgage—Registration—Mere registration is not “notice” within the meaning of s. 81 of the Transfer of Property Act (IV of 1932). **Shan Mau Nulu v Madras Building Company**, I L R, 15 Mad 268,

[I L R, 23 Cal, 790

288. ————— Mortgage—Subsequent mortgage to another person or part of the mortgaged property—Notice to pursue in sub-brancer—Transfer of Property Act (IV of 1932)

MORTGAGE—continued**G. MARSHALLING—concluded**

—Defendants Nos 1 and 2 mortgaged three properties, viz., A, B, and C to the plaintiff, and afterwards mortgaged one of them (1) only to one P. Subsequently the plaintiff obtained a money decree against defendants Nos 1 and 2 in respect of another debt, and in execution attached and sold their equity of redemption in C and purchased it himself thus becoming full owner of C, which he then sold to another person for Rs 100. P sued on his mortgage and obtained a decree and in execution property A was sold to defendant No 3. Subsequently the plaintiff sued to recover his debt by the sale of properties A and B only. Defendant No. 3 claimed that the securities should be marshalled and that the debt should be apportioned and that property C should bear its proportion of the debt. *Held* that the third defendant was entitled to have the debt apportioned, and that property C should bear its proportion of the debt. When the plaintiff purchased the equity of redemption in C he purchased it subject to its due proportion of the mortgage debt due to himself. On his purchase the debt to that extent ceased to exist, and the debt due to him on his mortgage was reduced by that amount. The proportion of the debt thus wiped out depended on the proportion of the value of property C to the rest of the mortgaged property. *Held* also that the third defendant had a right to have the securities marshalled. That right extends to a purchaser, and is not confined to a puisne incumbrancer. **Rodh Mal v Ram Harakh**, I L R, 7 All 711 followed. *Held* also that the fact that the third defendant had notice of the plaintiff's mortgage did not affect his right to have the securities marshalled. The question of notice was immaterial prior to the passing of the Transfer of Property Act. **Chunnil Vithaldas v. Fulchand**, I L R, 18 Bom, 160, followed. **LAXMIDAS RAMDAS v JAYVADAS SHANKARLAL**. I L R, 22 Bom, 304

289 ————— Transfer of Property Act (IV of 1932) s 82—Purchase by mortgagee at auction of portion of the mortgaged property—Effect of such purchase in reducing the mortgage-debt—When a mortgagee buys at auction the equity of redemption in a part of the mortgaged property, such purchase has in the absence of fraud the effect of discharging and extinguishing that portion of the mortgage debt which was chargeable on the property purchased by him that is to say, a portion of the debt which bears the same ratio to the whole amount of the debt as the value of the property purchased bears to the value of the whole of the property comprised in the mortgage. **Iskandias Ramdas v Jammadas Shankar Lal** I L R, 22 Bom., 304 followed. **Nand Kishore v Hariraj Singh**, I L R, 23 All, 23, and **Sunera Kaur v Bhagwant Singh**, Weekly Notes, All (1895), 1, and **Chunnil Lal v Anand Lal** I L R 19 All 116, considered. **Mahabir Prasad Singh v. Macnaghten** I L R 18 Cal 652. **Ismat Ali Khan v Jawahir Singh**, 13 Moore's I A, 401, and **Mahab Singh v. Mirza**, 13 Moore's I A, 83, referred to. **BHISNTER DIAL v. RAM SARUP**. I L R, 23 All, 284

MORTGAGE—continued.**6. MARSHALLING—continued.**

adopted son of the obligee (deceased) of a hypothecation-bond to recover principal and interest due on the bond against the land comprised in the hypothecation. Defendant No. 1, the obligor of the bond, had executed it as manager of a joint Hindu family of which defendant No. 2 was a member and for the rightful purposes of the family. The family subsequently became divided and the hypothecated property was divided between defendants Nos. 1 and 2. Defendant No. 1 afterwards hypothecated part of his share for a private debt to defendant No. 3, who having sued on his hypothecation and brought the land to sale in execution became the purchaser. The District Munsif passed a decree for the plaintiff against which defendants Nos. 2 and 3 preferred separate appeals. The District Judge on appeal passed a decree directing that the plaintiff should first proceed against all the property which was not subject to the hypothecation to defendant No. 3, including the share of defendant No. 2. Defendant No. 2 preferred a second appeal. *Held* that, as the plaintiff and defendant No. 3 were not creditors of the same person having demands against the property of that person, no case for marshalling arose, and consequently that the direction of the District Judge was wrong. *GOPALA v. SAMINATHAYYAN* . . . I. L. R., 12 Mad., 255

283. ————— *Transfer of Property Act (IV of 1882), s. 78—Priority of mortgages—Gross negligence—Registration.*—A mortgagee at the request of the mortgagors returned to them their certificate of title to the mortgaged premises to enable them to raise money to pay off his mortgage. This mortgage was duly registered. The mortgagors, who remained in possession of the mortgage premises throughout, having shown the certificate to a third person whom they informed of the existence of the first mortgage and borrowed Rs 400 from him, subsequently informed him that the first mortgage was paid off, delivered the certificate to him, and executed to him a mortgage of the same premises to secure the sum of Rs 100 and a further sum of Rs 800. *Held* that, though the second mortgagee had been wanting in caution, yet since he had been thrown off his guard by the conduct of the first mortgagor in returning to the mortgagors their certificate of title, the second mortgagee was entitled to priority in respect of his security over the first mortgagee. *DAMODARA v. SOMASUNDARA*

[I. L. R., 12 Mad., 420]

284. ————— *Transfer of Property Act (IV of 1882), s. 78—Priority of mortgages—Gross negligence—Registration.*—On the 20th of February 1888 defendant No. 1 executed a mortgage in favour of the plaintiff company. Defendant Nos. 2 and 3 found themselves as sureties for the due payment of the mortgage amount on default by the mortgagor. This mortgage had not been registered at the date of the execution of the mortgages next referred to. On the 27th of April 1884 the secretary of the plaintiff company handed over to defendant No. 1 most of the title-deeds which had

MORTGAGE—continued.**6. MARSHALLING—continued.**

been delivered to the plaintiff company on the execution of the mortgage, and defendants Nos. 1 and 3 undertook that they would raise a loan thereon and discharge the debt due to the plaintiff company, or return the title-deeds if they failed in raising the loan. On the 20th April 1888 defendant No. 1 deposited the title-deeds with defendant No. 4, and executed a mortgage to her for Rs 4,000; and on the 7th May 1888 he executed an instrument creating a further charge in her favour for Rs 1,000. These two sums were applied by defendant No. 1 to his own use, and not in discharge of the prior mortgage. The mortgages to defendant No. 4 described the mortgaged premises as being then free from incumbrances. *Held* that the plaintiff company had been guilty of gross negligence in letting the title-deeds out of their possession, and that the mortgages of defendant No. 4 had accordingly priority over the mortgage to the plaintiff company. *MADRAS HINDU UNION BANK v. VENKATRANGIAH* . . . I. L. R., 12 Mad., 424

285. ————— *Transfer of Property Act (IV of 1882), ss. 3, 78, 101—Priority of mortgages—Gross negligence—Extinguishment of charges—Registration Act (III of 1877), ss. 17 (d), 48—Notice by registration—Merger.*—In a suit for the declaration of the priorities of mortgages and for foreclosure, it appeared that the mortgaged premises had been purchased by the mortgagor from the second defendant and others in 1878, under a conveyance containing a covenant that they were free from incumbrances, and the mortgagor then received, *inter alia*, a Collector's certificate which was recited in another title-deed also handed over to her. The premises were mortgaged to defendant No. 2, who was an experienced sowcar in 1879, and to the plaintiff company in 1883, and again in 1884, and were conveyed absolutely by the mortgagor to defendant No. 2 in 1886. The mortgagor executed a rent agreement to the plaintiff company on the occasion of each of the mortgages of 1883 and 1884. The above mortgages were registered, but the plaintiff company and defendant No. 2 had no notice at the respective dates of their mortgages and conveyance of any previous incumbrance. The plaintiff company received the title-deeds of the estate from the mortgagor (but not the Collector's certificate) on the execution of the mortgage of 1883; the second defendant alleged that he had held them under a prior incumbrance which was consolidated in the mortgage of 1878, and that before the execution of that mortgage the mortgagor had obtained them from him for the purpose of obtaining a Collector's certificate, and had told him that the Collector had retained them, in order to account for their not being replaced in his custody. *Held* by the Lower Court (SHEPARD, J.), apart from the question whether the mortgage of 1879 had been extinguished by the conveyance of 1884, that the conduct of defendant No. 2 in permitting the title-deeds to remain in the possession of the mortgagor amounted to gross negligence within the meaning of the Transfer of Property Act, s. 78, and that the registration of the mortgage to defendant No. 2 did not affect the plaintiff company

MORTGAGE—continued.**8. REDEMPTION.****(a) RIGHT OF REDEMPTION.**

THAL v. MATHOOSRI KAMATCHI AMMA BOYI SAIR
 AVERGUL 7 Mad., 395

297. ———— *Usufructuary mortgage—Alteration of original transaction—*

mortgage into a transaction of a different nature
 Once a mortgage always a mortgage, is a principle

an estate
 ENAITH v.
 SREENAITH

[W. R., F. B., 79

ASAPAL SINGH v. NUNGOO SINGH . 3 Agra, 218

298 ———— Right to get back land on

deposit in usufructuary mortgage—*Beng.*

Reg. I of 1793—Demand of land in excess—The

l, under

back his

If by

than is

comprised in the mortgage, that is not a matter

which can justify the mortgagee in keeping possession

of land which is in fact comprised in it *MORUN*

LAL v. ALI AZUL W. R., 1864, 219

one to whom the equity of redemption has been

transferred by a *bond fide* sale. HEERA SINGH v.

RAGHO NATH BHAI BHURATH SINGH v. RAGHO

NATH BHAI 3 Agra, 30

300. ———— Deposit giving no right to

redeem—*Beng. Reg. I of 1793—Beng. Reg. XVII*

of 1806, s. 7.—Where money was paid into Court by a

a regular suit

1799 and 1800

such a case.

ABDOOL RAHMAN

[B. L. R., Sup. Vol., 598: 6 W. R., 225

MORTGAGE—continued.**8. REDEMPTION—continued.**

301. ———— Mortgage by conditional
 sale—*Sale of land and agreement for repurchase—*

that there were contained in the deeds indications
 that the parties intended to effect a mortgage by
 conditional sale. In such a mortgage it is not
 necessary that the mortgagor should make himself
 personally liable for the repayment of the loan (2)
 The equity of redemption was rendered applicable

agreement for repurchase similar to those in Regula-
 tion I of 1793, relating to the deposit of mortgage
 money in the Treasury, giving the like power to
 deposit, (b) the inclusion in the present security of
 a sum due on an account open to be increased, other
 than the price fixed for the repurchase, and other
 matters. *Bhagwan Sahas v. Bhagwan Din, I L. R.,*
12 All., 387 L. R., 17 I. A., 98, distinguished.
BALKISHEN DAS v. LEGON I. L. R., 23 All., 149
[L. R., 27 I. A., 58
4 C. W. N., 153

Affirming decision of the High Court in
[L. R., 19 All., 430

303. ———— *Beng. Reg.*

of a petition for foreclosure a mortgagee deposited the
 principal debt, and interest for the last year of
 the mortgage term, which had expired. Interest for
 prior years of the term had not been paid, but
 this, according to the mortgagee's contention, was,

MORTGAGE—continued.**7. TACKING.**

280. ———— *Principle of tacking—Purchase of equity of redemption—English law.*—In 1810 *A* mortgaged certain lands to *B*, which he had granted in *patni* at a rent of *R*145. Subsequently in September 1814 *A* granted a fresh *patni* at a reduced rent of *R*90; and on the 9th October 1814 *A* mortgaged the same lands to *C*. In 1856 *C* obtained a decree for the redemption of the mortgage to *B*, and he paid off the debt to *B*; but it did not appear that he took an assignment of the mortgage for the purpose of keeping it on foot as a security against incumbrances created by *A* subsequently to the date of that mortgage, and prior to that of the mortgage to himself; and in 1862 he obtained a final decree for foreclosure against *A*. In a suit by *C* to set aside the lease of September 1814,—*Held* that it was valid and binding upon him. *See* *Semle*.—The English principle of tacking does not apply to mortgages of land in the *mofussil*. *GATH NARAYAN MAZUMDAR v. BRAJIA NATH KUNDU CHOWDHRY* [5 B. L. R., 463; 14 W. R., 491]

281. ———— *English law.*—The English law of tacking is not recognized in the Courts of this country. *UDAYA CHANDRA RANA v. BHASAHARI JANA* . . . 2 B. L. R., Ap., 45

ODOY CHURN RANA v. BROJOHURY JANA [11 W. R., 310]

282. ———— *Redemption.*—The owner of a house in 1861, in consideration of *R*190, mortgaged it to the defendant, and put him into possession. The mortgage-deed needed no registration, and was not registered. The mortgagor next mortgaged the house in 1873 to the plaintiff for *R*300 by a deed duly registered. He again in 1874 borrowed on the same security a further sum of *R*500 from the defendant, and executed in his favour a deed of mortgage which was duly registered. The plaintiff in 1876 sued the mortgagor for possession, and obtained a decree, the execution of which the defendant resisted. The plaintiff now sued the defendant to eject him, and to obtain possession of the mortgaged property until payment of the amount due on his mortgage. The defendant denied the plaintiff's mortgage and set up his own two mortgages, and claimed to be paid the amount due on both of them before he could be called upon to render up possession. *Held* that the English doctrine of tacking was of so special and technical a character, and so little founded on general principles of justice, that it ought not to be held applicable to the *mofussil* of Bombay, but that the obligations arising out of successive mortgages should be discharged in the order of their date. *Held* consequently that the defendant's right as against the plaintiff was either to redeem the plaintiff's intermediate mortgage, or else to hold the mortgaged property until his own first mortgage was redeemed by the plaintiff; but that the defendant could not claim to retain possession, as against the plaintiff, until his second mortgage, as well as his first, was paid off, since plaintiff's mortgage was prior in date to, and therefore was to be preferred before,

MORTGAGE—continued.**7. TACKING—concluded.**

the second mortgage of the defendants. *NARAYAN VENKONA v. PANDURANG KAMAT* [I L. R., 7 Bom., 526]

283. ———— *Redemption.*—The mortgagor of an estate gave the mortgagee four successive bonds for the payment of money, in each of which it was stipulated that, if the amount were not paid on the due date, it should take priority of the amount due under the mortgage, and redemption of the mortgage should not be claimed until it had been satisfied. The representative in title of the mortgagor subsequently sued the mortgagee for possession of such estate on payment merely of the mortgage-money. *Held* that, although such bonds did not in so many words create charges on such estate, yet inasmuch as it appeared from their terms that it was the intention of the parties that the equity of redemption of such estate should be postponed until the amount of such bonds had been paid, the representative in title of the mortgagor was not entitled to possession of such estate on payment merely of the mortgage-money. *ALLU KHAN v. ROSHAN KHAN* . . . I. L. R., 4 All., 85

284. ———— *Redemption—Further charge.*—The mortgagor of an estate gave to the mortgagee, subsequently to the date of the mortgage, two successive money-bonds, in each of which it was stipulated that, if the amount were not paid on the due date, it should take priority of the amount due under the mortgage, and that redemption of the mortgage should not be claimed until the bond had been satisfied. The assignee of the equity of redemption sued for possession of the estate on payment merely of the mortgage-money. *Held* that the two subsequent bonds did not create a further charge on the mortgaged premises, although they would prevent the original mortgagor from redeeming without paying their amounts. *HARI MAHADAJI SAVARKAR v. BALASDHAT RAGHUNATH KHARE* [I. L. R., 9 Bom., 233]

285. ———— *Subsequent agreement—Covenant to pay an additional sum—Charge—Compromise.*—In a suit on a mortgage, dated 1878, it appeared that the premises had been mortgaged in 1874, but the mortgagor had been left in possession under a lease; and that a suit brought by the mortgagee (on the rent reserved by the lease falling into arrears) was compromised in 1877 on the terms that *R*3,680 should be paid together with the amount secured by the mortgage of 1874. The instrument of compromise was not registered, and the amount was not paid. *Held* that the plaintiff's mortgage was subject to the mortgage of 1874 only, and not to the arrangement comprised in the compromise. *Quære*—Whether the compromise would, if registered, have charged the land with *R*3,680, or whether its effect was merely to make the equity of redemption conditional on payment of that amount, in such a manner as not to affect the rights of the subsequent mortgagee. *UNNI v. NAGAMMAL* [I. L. R., 18 Mad., 368]

MORTGAGE—continued**8. REDEMPTION—continued.**

set aside. **MALKARJUN BIN SHIDRAMAPPA PASARE**
v. NARHARI BIN SHIVAPPA . L. R., 27 L. A., 218

311. ——— Redemption of mortgaged

gagées to Government for revenue, with interest in addition to the money due under the mortgage. But in a suit for redemption, in which the mortgagor deposited before suit the amount of the principal sum borrowed by him, he is entitled to a decree on payment into Court of the further sum paid for Government revenue. **JOTPROKASH ROY v. GOORJHAN JHA 3 W. R., 174**

312. ——— Attaching creditors, Right

PAUL & NITTE CHURN BYSACK

[L. L. R., 6 Cal., 663; 7 C. L. R., 201]

313. ——— Patnidar, Right of, to redeem.—Terms upon which a patnidar was lit in to redeem stated. CASIMUNISSA BINEE v. NIKRATVA BOSE I. L. R., 8 Cal., 78
[9 C. L. R., 173; 10 C. L. R., 113]

planter (mortgagor) of the sale, and suggesting his concurrence. He, in a written acknowledgment,

purchaser took and retained possession. After two years the mortgagor died, leaving a will, in which he described his property, but did not mention the mortgaged factories. The conveyance to the purchaser was produced, in which the mortgagor was made a party, but which was dated and executed after the mortgagor's death. It purported to be, not an exercise of the power of sale, but a transfer of the legal estate by the mortgagors at the request of the mortgagor: it was executed by the mortgagors and purchaser. *Held*, firstly, that the mortgagor's heir was not entitled to redeem (see also *Greenough v. Bales v. Golderhoush Bermans*, 2 Ind. Jur., N. S., 319), also that, on dismissal of the redemption suit, no terms or conditions could be imposed on the defendant, who in this case held under the original contract of sale to which the mortgagor assented. *Held*, secondly, that even had the contract included (as argued for appellant) an undertaking to indemnify from liabilities, the payments sought to be reimbursed were beyond six years, and no fraud was

MORTGAGE—continued.**8. REDEMPTION—continued.**

proved, therefore as to these the suit was barred. **DOUGLASS v. WISS 2 Ind. Jur., N. S., 230**

315. ——— Conditional sale—Surety, Assignment to, from mortgagee—

was made and the surety paid the money, and took an assignment of the land from the mortgagee. *Held* that the heir of the mortgagee was entitled to redeem, and that as against him the surety could not claim to hold the lands as purchaser. **GOHAKI KANAJI v. NATHU DIN APPAJI 1 Bom., 135**

316 ——— Assignee of mortgage, Right of, to redeem—Raznamah—gatkuli tenure—Extinguishment of equity of redemption.—A mortgage-deed of gatkuli land contained a clause by which the mortgagor agreed, at the expiration of the period for which the mortgage was made, to give a raznamah of the mortgaged land. In accordance with this stipulation the mortgagor gave a raznamah to Government by which he gave up all claim to the land, which was then granted to the mortgagee. *Held* that the equity of redemption of the mortgagor was thereby extinguished. **RANER VALAD AVAJI MALI v. KAMA BAI KUM MAHABU MALI 6 Bom., A. C., 265**

317. ——— Pawns mortgage, Right of, to redeem—Prior mortgage.—A pawns mortgagee is entitled to redeem from the prior mortgage who obtains a foreclosure decree in a suit to which the pawns mortgagee is not made a party or from the purchaser in the foreclosure suit, and it is immaterial whether the pawns mortgage is or is not registered, or whether the prior mortgage at the date of the suit had or had not notice of the pawns

allowed the plaintiff to change his case, and in the same suit permitted him to redeem the defendant. **SANKANA KALANA v. VISHPAKSHAPA GANESHAPA [L. L. R., 7 Bom., 146]**

318. ——— Redemption of first mortgage by further mortgage.—Held that a mortgage contract received as a security for a repayment of loan does not incapacitate the mortgagor from any other dealing with the property, except in defeasance of the right of the mortgagee. Where therefore a suretyship lease had been granted to the defendant for nine years containing a stipulation that the mortgagor should not alienate or mortgage the land,—*Held* that a second suretyship to the plaintiff made after the expiration of the nine years' term for the bond vide purpose of paying off the debt due on the first mortgage, was not voidable as contravening the terms of the first mortgage lease, and the plaintiff was entitled to sue to redeem the

MORTGAGE—continued.**8. REDEMPTION—continued.**

by the terms of the condition attached to a separate deed. *Held* that the mortgagee had no right to redeem the land in the same form as parcel mortgaged to a 7th of the Bombay Municipal Corporation, the mortgagee had no right to demand payment of the year of interest but was entitled to demand the principal of the mortgage. *Maharaja AMRANNA v. PANDYA PERCHOTTELU*. I. L. R., 9 All., 20 (I. L. R., 13 L. A., 113)

303.

Mortgagee's right to redeem property of a mortgagor. In 1889, the mortgagee of a property of 1880, which was sold to a person in 1881, the mortgagee was not paid in March 1882, the mortgagee's right to redeem was not lost. *Held* that the mortgagee's right to redeem was not lost. *Maharaja AMRANNA v. PANDYA PERCHOTTELU*. I. L. R., 13 L. A., 113 (I. L. R., 15 Mad., 230)

304.

Mortgage becoming sale if not redeemed in certain time. In 1880, the mortgagee of a property of 1880, which was sold to a person in 1881, the mortgagee was not paid in March 1882, the mortgagee's right to redeem was not lost. *Held* that, in the Mortgagee's right to redeem was not lost. *Maharaja AMRANNA v. PANDYA PERCHOTTELU*. I. L. R., 13 L. A., 113 (I. L. R., 15 Mad., 230)

[7 B. L. R., 120; 15 W. R., P. C., 35
13 Moore's L. A., 500]

305.

Right to redeem by deposit of principal. In 1880, the mortgagee of a property of 1880, which was sold to a person in 1881, the mortgagee was not paid in March 1882, the mortgagee's right to redeem was not lost. *Held* that, in the Mortgagee's right to redeem was not lost. *Maharaja AMRANNA v. PANDYA PERCHOTTELU*. I. L. R., 13 L. A., 113 (I. L. R., 15 Mad., 230)

S. C. AMRANNA v. PANDYA PERCHOTTELU. 14 W. R., 278

306.

Time for redemption. In 1880, the mortgagee of a property of 1880, which was sold to a person in 1881, the mortgagee was not paid in March 1882, the mortgagee's right to redeem was not lost. *Held* that, in the Mortgagee's right to redeem was not lost. *Maharaja AMRANNA v. PANDYA PERCHOTTELU*. I. L. R., 13 L. A., 113 (I. L. R., 15 Mad., 230)

307.

Decree for redemption—Execution barred by limitation—See and to redeem. In a suit for redemption of a mortgage a decree was passed by consent to the effect that the land was redeemable upon payment of a certain sum on a certain date, but there was no direction in the decree that in default of payment the mortgage be foreclosed. This decree was not executed. After three years the right, title, and interest of the

MORTGAGE—continued.**8. REDEMPTION—continued.**

mortgagors in the land was purchased in execution of a decree by the plaintiff, who thereupon sued the mortgagee to redeem the land. *Held* that the plaintiff was entitled to redeem. *PANDYA PERCHOTTELU v. AMRANNA*. I. L. R., 7 Mad., 423

308.

Omission to execute decree for redemption in time. Effect of fresh suit for redemption. Where a decree for redemption was passed, but it is not executed within the prescribed period for execution, the mortgagee does not, by consent of the mortgagor to execute the decree, lose to the mortgagor, but the mortgagor or his representative may still maintain a fresh suit for redemption. *CHAITA v. PURAN SOKH*

[2 Agra, 256]

309.

Suit for redemption—Omission to execute decree for redemption in time. Effect of fresh suit for redemption. Where a decree for redemption was passed, but it is not executed within the prescribed period for execution, the mortgagee does not, by consent of the mortgagor to execute the decree, lose to the mortgagor, but the mortgagor or his representative may still maintain a fresh suit for redemption. *CHAITA v. PURAN SOKH*

[I. L. R., 11 All., 386]

310.

Omission to set aside decree and sale of mortgaged property under it—Refusal of redemption. Redemption of a mortgage was refused, as it appeared that the mortgaged property had been sold in execution of a decree against the mortgagor, and that the plaintiff had neglected and refused to pray that it might be

MORTGAGE—continued.**8. REDEMPTION—continued**

estate with all the rights and privileges enjoyed by the latter **KISHENDATT RAM v. MUMTAZ ALI KHAN** [I. L. R., 5 Cal., 198; 5 C. L. R., 213 L. R., 8 I. A., 145]

322 ——— Right where mortgagee has purchased equity of redemption—*Act VI of 1855, Construction of—Sale of legal and equitable rights of judgment-debtors.*—Cl. 1, s. 1, Act VI of 1855, shows that the statute was designed for the benefit of creditors, and that it authorized sale of both the legal and equitable right of judgment-debtors. Under this clause, therefore, an equity of redemption was a kind of property that might be seized and sold. *A*, a mortgagee who takes from *B* as security an existing mortgage from *C* to *B*, stands in the same position towards *A* and is subject to the

same position towards *A* as *B* would be in the event of a sale and conveyance of his rights and interests under the mortgage. **TOULUCKONOHUN TAOOR v. GOBIND CHUNDER SEN**

[I. Ind. Jur., O. S., 128; 1 Hyde, 289]

323 ——— Redemption where mort-

stand between the mortgagor and those rights to redeem which that suit in its ultimate issue may have left open and affirmed to him. **MUSSOOR ALI KHAN v. OODHYA RAM KHAN** 8 W. R., 388

chaser or take away his right to redeem. **JYRAM GUR v. KRISHAN KISHORE CHUND** 3 Agra, 307

328. ——— Clause for conditional sale—*Effect of, on right of redemption.*—A clause

MORTGAGE—continued**8. REDEMPTION—continued.**

of conditional sale contained in a mortgage-deed does not prevent the redemption of the mortgage. **KANAYALAL v. PYAHARAI** I. L. R., 7 Bom., 139

[1 Agra, 234]

328. ——— Bar of right of redemp-

foreclosure had effectually barred the equity of redemption. *Held* by the Privy Council that the Sudder Court ought not to have decided the case on the question of foreclosure, because that question,

329 ——— Condition preventing effect of right of redemption. *Onerous condition in mortgage deed—Condition that after redemption the mortgagee should continue in possession.*

Equity **MAHOMED MUSS v. JIMIBHAI BHAGVAN** [I. L. R., 9 Bom., 524]

330. ——— Decree for redemption within six months—*Transfer of Property Act (IV of 1882), proviso to s. 93—Mortgage—Expiration of six months without payment—Application after expiration of six months to extend the time for redemption.*—In redemption suits the original decree (passed under s. 92 of the Transfer of Property Act, is only in the nature of a decree nisi, and the order passed under s. 93 is in the nature of a decree absolute. Under the proviso to s. 93 of that Act, an application to extend the time for redemption fixed by the original decree may be made at any time before the decree absolute is made. **MAHOMED v. BABAJI** I. L. R., 23 Bom., 771

MORTGAGE—continued.**8. REDEMPTION—continued.**

first mortgage. **DOOKHCHORE RAI v. HIDAYUTOOL-LAH** . . . Agra, F. B., 7: Ed. 1874, 5

See **MAHOMED ZAKAOULLA v. BANEE PERSHAD**
[1 N. W., Ed. 1873, 135

SHEOPAL v. DEEN DYAL . . . 5 N. W., 145

319. ——— Purchaser of equity of redemption, Right of, to redeem—*Usufructuary mortgage followed by sale—Revival of mortgage by cancelment of sale—Attachment in execution of decree.*—*Z* mortgaged in 1859 certain immoveable property, being jointancestral property, for a term of five years, giving the mortgagee possession of the mortgaged property. In 1861 *Z* sold this property to the mortgagee, whereupon the sons of *Z* sued their father and the mortgagee, purchaser, to have the sale set aside as invalid under Hindu law, and in August 1864 obtained a decree in the Sudder Court setting aside the sale. The mortgagee, purchaser, remained, however, in possession of the property as mortgagee. In May 1867, *Z* having sued the mortgagee for possession of the property on the ground that the sale had been set aside as invalid, the High Court held that *Z* could not be allowed to retain the purchase-money and to eject the mortgagee, purchaser, but must be held estopped from pleading that that sale was invalid. In November 1867, one *K* having caused the property to be attached and advertised for sale in the execution of a decree which he held against *Z* and his sons, the mortgagee objected to the sale of the property on the ground that *Z* and his sons had no saleable interest in the property. This objection was disallowed by the Court executing the decree, and the rights and interests of *Z* and his sons were sold in the execution of the decree, *K* purchasing them. In 1878 *K* sued as the purchaser of the equity of redemption, for the redemption of the mortgage of 1859. *Held* that *K* was entitled to redeem the property. *Held* also that, the mortgagee not having contested in a suit the order dismissing his objection to the sale of the property in execution of *K*'s decree, he could not deny that *K* had purchased the rights and interests remaining in the property to *Z* and his sons. *Held* also that the mortgagee had no lien on the property in respect of his purchase money. *Held* also that, it being stipulated in the deed of mortgage that the mortgagee should pay the mortgagor a certain sum annually as "malikana," and the mortgagee not having paid such allowance since the date of the sale, the plaintiff was entitled to a deduction from the mortgage-money of the sum to which such allowance amounted. **BASANT RAI v. KANAUJI LAL**

[I. L. R., 2 All., 455

320. ——— Purchaser of property, Right of, to redeem—*Suit for ejectment where there is an equitable lien on the property.*—In 1848 *B L* obtained a decree against *R C* and *R L*, and in 1863, at a sale in execution of that decree, the plaintiffs' ancestor purchased the property now in dispute and took possession. In 1861 one *K R* sued the representatives of *R C* on a mortgage-bond under which a sum of money was alleged to have been secured upon the said property, and obtained a decree

MORTGAGE—continued.**8. REDEMPTION—continued.**

against the defendants personally which did not direct sale of the mortgaged property. The plaintiff's ancestor bought the property with the knowledge of the mortgage. *K R* in 1863, in execution, sold the right, title, and interest of her judgment-debtors in the property to the defendants who paid Rs.5,000 as consideration-money and obtained possession. In a suit to eject the defendants on the ground that the latter obtained no title to the property by their purchase,—*Held* that, so far as the defendants' money had gone to pay off the charge which *K R* had on the land to that extent, they were entitled to stand in her shoes as an incumbrancer; and that the suit, as far as regards the land covered by the mortgage-bond, must be taken to be a redemption suit, and the plaintiff ought not to be allowed to recover the property without paying the defendants so much as on a proper taking of accounts might appear to be due to them. **RAMESUR PERSHAD NARAIN SINGH v. DOOLEE CHAND** . . . 19 W. R., 422

321. ——— Right to redeem sub-tenures purchased by mortgagee—*Acquisitions by mortgagor and mortgagee.*—*Semble*—Under the English law, which, in so far as it rests on principles of equity and good conscience, may properly be applied in India, it is recognized as a general rule that most acquisitions by a mortgagor enure for the benefit of the mortgagee; and conversely, that many acquisitions by a mortgagee are, in like manner, to be treated as accretions to the mortgaged property, or substitutions for it, and therefore subject to redemption. But *semble*—It cannot be affirmed that every purchase by a mortgagee, of a sub-tenure existing at the date of the mortgage, must be taken to have been made for the benefit of the mortgagor so as to enhance the value of the mortgaged property, and make the whole, including the sub-tenure, subject to the right of redemption on equitable terms, *e.g.*, where there is a mortgage of a zamindari in Lower Bengal, out of which a patni tenure has been granted, the mortgagee in possession might buy the patni with his own funds and keep it alive for his own benefit. An Oudh talukhdar granted an usufructuary mortgage of a portion of his talukh, in respect of which there existed certain subordinate birt tenures. The mortgagee, having subsequently acquired these birt tenures by purchase, did not, as he might have done, keep them alive as distinct sub-tenures, but treated them as merged in the talukh. The mortgagor, many years after, brought a suit for redemption, when the question arose, whether upon repaying the sum expended by the mortgagee in the purchase of the birts, in addition to the amount due on the face of the mortgage-deed, the plaintiff was entitled to the possession of the estate as then enjoyed by the mortgagee; or whether the latter was entitled to retain the birt rights and interests purchased by him as an absolute under-proprietary tenure in subordination to the talukhdar, and to have a sub-settlement on that basis. *Held* that the plaintiff, on repayment of the original mortgage-debt and on reimbursing the defendant the sum expended in purchasing the birts, was entitled to re-enter on the

MORTGAGE—continued**8 REDEMPTION—continued**

Act V of 1879, ss 56, 57, 153—In a suit for redemption of land mortgaged to the defendant in 1870, the defendant pleaded adverse possession. In 1876 he had obtained a decree for sale which he had not executed. In 1877, the Mamladar being about to sell the land for arrears of assessment, the defendant paid the amount, and was thereupon put into possession by the Mamladar. He had retained possession ever since and had continued to pay the assessment. *Held* that the plaintiff was entitled to redeem. It did not appear that the land had been declared to be forfeited by the Collector under ss. 56, 57, and 153 of the Land Revenue Code (Bom-

n mortgagee and mortgagor between himself and the plaintiff. The defendant not having exercised his right to sell under the decree of 1876, the plaintiffs were now entitled to redeem, the sum found due by the decree at its date being taken as *res judicata* between the parties. **DASHABATHA v. NYANAL CHAND**. I. L. R., 16 Bom., 134

338. ——— **Undertaking not to alienate the equity of redemption—Right of assignee of mortgagor—Assignment of the equity of redemption—Repayment of mortgage-debt**—Where a mortgagor undertakes that he would not alienate the equity of redemption, and that the mortgagee should

disent of the estate he had in the property by virtue of his equity of redemption, it could not be given effect to. When a mortgage debt is contracted in a particular currency, it shall be repaid in that currency. **TRIMBAK JIJAJI DESHMUKHA v. DAKHARAM GOPAL**. I. L. R., 16 Bom., 509

339. ——— **Prior and pious incumbrances—Pious incumbrancer not made a party to suit upon prior incumbrance**—If a prior incum-

R, 9 All., 120, and *G. Jadhav v. Valchand*, I. L. R., 10 All., 520, referred to. **NANBAR CHAUDHRI v. KARAM RAJI**. I. L. R., 13 All., 315

340. ——— **Right to redeem first mortgage independently of later mortgage—Mortgage to a firm—Subsequent mortgage to one member of the firm for personal loan, with stipulation for payment of new debt before prior mortgage debt**—On the 13th July 1877 a firm of which defendants Nos. 1 to 4 were members, lent money to A on mortgage of certain property. Subsequently defendant No. 2 personally made a further

MORTGAGE—continued.**8 REDEMPTION—continued.**

loan to A, who executed two similar mortgage-deeds to him of the same property containing stipulations that these bonds should be paid before the mortgage of July 1877. A died, and his widow and heirs assigned the equity of redemption of the mortgage of July 1877 to the plaintiff, who sued the defendants to redeem. The defendants contended that the plaintiff was bound to pay off the two later bonds as well as the original mortgage-debt. *Held* that the later loan by defendant No. 2 being a personal loan by him, the firm, as such, had no equity to insist on its being paid before the mortgage was redeemed, whatever right defendant No. 2 in his personal capacity might have. But in this suit, which was one to redeem the mortgage, he was a party as member of the firm, and not in his individual capacity, and he could not therefore resist the plaintiff's right to redeem on any ground based on the promise of the two bonds executed to himself. **CHHOTALAL GOVINDRAM v. MATUR KETALRAM**. [I. L. R., 18 Bom., 591]

341. ——— **Right to redeem made conditional on payment by mortgagor of another debt as well as mortgage debt—Effect of that other debt becoming barred by limitation—Right to redeem mortgage still subject to condition**—A mortgage bond contained a clause

same time as the mortgage in respect of money due under a decree, and that, "unless the whole was paid off neither the mortgagor nor any one else should have a claim." The mortgagee subsequently obtained a decree on the instalment bond and made several attempts to execute it, but failed his last being eventually rejected as time barred. *Held* that the right of redemption was made conditional on the payment of what was due on the instalment bond—a condition which was unsatisfied as long as such sum remained unpaid, although in contemplation of law there might be no longer a bond debt still in existence owing to a decree having been issued on the bond, and that decree having become barred by limitation. **SENDAR MALHAR PATEL v. HAFIJI SHRIDHAR**. [I. L. R., 18 Bom., 755]

342. ——— **Decree for redemption omitting to state consequence of non payment of mortgage money within times specified—Limitation—Transfer of Property Act (IV of 1882), s. 92**—Where a Court gave plaintiff a decree for redemption of a mortgage conditioned on payment by him of the mortgage money within a specified time from the date of the decree, but omitted to state in such decree what would be the consequences of the plaintiff's default in so paying in the mortgage money, *Held* that such omission could not operate to extend the period available to the plaintiff for payment beyond the maximum term provided for by s. 92 of Act IV of 1882. **Jai Kishen v. Dholu Nath**, I. L. R., 14 All., 527, referred to.

(6075)

MORTGAGE—continued.

8. REDEMPTION—continued.

first mortgage. **DOOKHCHORE RAI v. HIDAYUTTOOL-**
LAH **Agra, F. B., 7: Ed. 1874, 5**
See MAHOMED ZAKAOOLLA v. BANEE PERSHAD
[1 N. W., Ed. 1873, 135
5 N. W., 145

SHEOPAL v. DEEN DYAL

319. — Purchaser of equity of redemption, Right of, to redeem—Usufructuary mortgage followed by sale—Revival of mortgage by cancellation of sale—Attachment in execution decree.—Z mortgaged in 1859 certain immovable property, being joint ancestral property, for a term of years, giving the mortgagee possession of the gaged property. In 1861 Z sold this property mortgagee, whereupon the sons of Z sued their and the mortgagee, purchaser, to have the aside as invalid under Hindu law, and in August obtained a decree in the Sudder Court set aside the sale. The mortgagee, purchaser, nevertheless, in possession of the property as mortgagor. May 1867, Z having sued the mortgagee, possession of the property on the ground that it had been set aside as invalid, the High Court could not be allowed to retain the property and to eject the mortgagee, purchaser, held estopped from pleading the invalidity. In November 1867, one K property to be attached and in execution of a decree which his sons, the mortgagee objected property on the ground that saleable interest in the property disallowed by the Court execution rights and interests of Z the execution of the decree. 1878 K sued as the purchaser of redemption, for the redemption. **Held** that K's property. **Held** also that contested in a suit to the sale of the property he could not deny and interests of his sons. **Held** also that the property in also that, it being that the mortgagee obtain sum amount not having sale, the mortgagee's mortgagee's interest was not to be revived.

320.

Right there 1848 and pla dis th

Unregistered to sell to mortgagee of redemption

MORTGAGE

again
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agreement.—In a mortgagee for value of the mortgagee in the mortgagee had the mortgagee pre-purchase-money had the balance had the agreement. It the plaintiff had taken his the above agreement and the plaintiff, having purchased with notice as above, was not the plaintiff having was put upon enquiry to the lender had been made, and was any objection to his purchase.

[I. L. R., 12 Mad., 505

Time fixed for redemption.—**Property Act, ss. 92, 93—Application of the decree.**—In a suit to redeem a mortgage decree was passed which provided that the redemption amount and the value of interest be paid in three months. The decree was not paid within that period, but the mortgagee applied to execute the decree at a later date. **Held** that the application did not fall under s. 93 of the Transfer of Property Act, and that the decree-holder was not then entitled to have the decree executed. **Poreh Nath Mojudar v. Rmjudu Mojudar, I. L. R., 16 Cal., 246,** distinguished. **Ss. 92 and 93 of the Act ought to be read together, and the proviso of the latter section has no application where the mortgagee does not apply for foreclosure or where the original decree does not contain the last clause mentioned in s. 92.** **ELAYANATH v. KRISHNA. I. L. R., 13 Mad., 267**

336. — Limitation—Date of accrual of cause of action—Mortgage—Transfer of Property Act (17 of 1882), ss. 86 and 87.—Held that, where a right of redemption arises on the foreclosure of a mortgage, the right of redemption accrues from the date of the mortgage, not from the date by the mortgagee obtains said Act. **Raghunath v. Rmjudu Mojudar, 1890, I. L. R., 14 Cal., 246.**

See BATEL

and RAHAM

337.

Unregistered mortgage

MORTGAGE—continued**8 REDEMPTION—continued**

decre, the right of redemption will be barred if not exercised within the period so limited. The principle in *Jajpur Nath Panda v Joku Te cori* I L R 18 All, 223, applied. *CHIRANJI LAL v DHARAM SINGH* I L R, 18 All, 455

351. — Execution of decree for redemption—*Transfer of Property Act (IV of 1882), ss 87, 89 and 92—Extension of time limited for payment of decretal amount*—In the case of a decree for redemption or for foreclosure under the Transfer of Property Act 1882 both of which decrees stand in this respect upon the same footing no extension of the time limited by the decree for payment of the decretal amount can be made except for good cause shown whether the order under s 87 in a suit for foreclosure or the order under s 93 in a suit for redemption has been applied for or not. *Poresh Nath Majumdar v Ramjodu Majumdar* I L R, 16 Calc, 246 dissented from. *Kanra Kurup v Govinda Kurup* I L R 18 Mad 214 distinguished. *RAM LAL v TULSA KUR*

[I L R, 18 All, 180

See *RAJARAM SINGHJI v CHUNNI LAL*

[I L R, 19 All, 205

HARJAS RAY v RAMESHOB I L R 20 All, 354

But see *KEDAR NATH RAUT v KALI CHURN RAUT* [I L R, 25 Calc 703

352. — Stipulation postponing the right to redeem beyond the time when the mortgagee can require payment of the mortgage debt—A stipulation postponing the mortgagor's right to redeem beyond the time when the mortgagee can call in his money is inoperative. *Abul Hak v Gulam Zilani* I L R 20 Bom 677 followed. *SANJE MOTIRAN MAHADE*

[I L R, 22 Bom, 375

But see *KRISHANRAJI v MAHESAVAR LAKSHMAN GONDIALEKAR* I L R, 20 Bom, 346

is a mortgage, that if the mortgage money is not paid on the due date the mortgagor will sell the property to the mortgagee at a price to be fixed by umpires is unenforceable as constituting a fetter on the equity of redemption. *KANARAM v KUTTOOLY* [I L R, 21 Mad, 110

354. — Covenant fettering right of redemption—*Covenant for pre-emption on mortgaged property in favour of mortgagee—Collateral advantage—Transfer of Property Act (IV of 1882) s 60*—A provision in a mortgage which has the effect of preventing redemption of the mortgaged property on payment of principal interest and costs

MORTGAGE—continued**8 REDEMPTION—continued**

right of pre-emption in respect of the mortgaged property at a price fixed by reference to another share in the same village was *pro et contra* a good covenant and enforceable by the mortgage. *Biggs v Hoddinott*, L R, 1839, 2 Ch 307. *Saniley v Wilde* L R 1899 2 Ch 374 and *Orby v Trigg* 9 Mad 2, referred to. *BHARAJATI v BHARAJA KUR* I L R, 23 All, 238

355. — Right of mortgagor to redeem land so taken in exchange—*Mortgagee taking other land in exchange for mortgaged land—Fraud—Forest Act (VII of 1878) s 10, cl (d)—Bombay Land Revenue Code (Bom Act V of 1879), s 56*—In 1876 B mortgaged certain land (Survey Nos 51 and 52) to S who died and his brother G succeeded him. The Forest Department being desirous of acquiring the mortgaged land entered into negotiations with G who admitted that he was only a mortgagee. B (the mortgagor) had left the village, and could not be found. Under these circumstances, it was arranged that G should allow the assessment to fall into arrear upon which Government would forfeit the holding and that G should receive other land (Survey No 103) in exchange. This arrangement was actually carried out. G received Survey No 103

of 1876. The defendant contended that this land was not subject to the mortgage and that by the exchange G had acquired the full ownership in it. Held that the plaintiff was entitled to redeem Survey No 103. The mortgagee G had lost the mortgage or its equity of redemption in the mortgaged land by fraud and the land (Survey No. 103) which he obtained in exchange was therefore subject to the mortgage. He held the equity of redemption in this land as trustee for the mortgagor. *BABAJI v MAGNIRAM* I L R, 21 Bom, 336

356. — Second suit for redemption—*Transfer of Property Act (IV of 1882), ss 92 and 93—Decretal money not paid within the time limited—Civil Procedure Code s 13—Res judicata—Right of suit* Held that a mortgagor whether or not a simple or a usufructuary mortgagee who has

by the decree cannot subsequently bring a second suit for redemption of the mortgage in respect of

I L R 7 Mad 423 and *Kanwar v Bhanu* Dalton I L R 15 Mad 376 dissented from. *HAT v RAZI UD DIN* I L R, 10 All, 202

MORTGAGE—continued.**8. REDEMPTION—continued.**

Bandhu Bhagat v. Muhammad Taji, I. L. R., 14 All., 350, dissented from. *WAZIR v. DHUMAN KHAN* [I. L. R., 16 All., 65

343. ——— Two mortgages between the same parties over the same property—Right to redeem one without the other—*Tacking—Transfer of Property Act (IV of 1882), ss. 61 and 62—Stat. 44 & 45 Vict., c. 41, s. 17.*—A mortgagee held two mortgages over the same property from the same mortgagor, the one being a usufructuary mortgage in respect of interest only, and the other being a simple mortgage. The mortgagor sued to redeem the usufructuary mortgage. The mortgagee objected that the mortgagor was bound to redeem both mortgages. *Held* that the mortgagor had the right to redeem one mortgage without redeeming the other, and that, in the absence of special contract to redeem both mortgages simultaneously, he could not be compelled to redeem them both lost. *Nithal Mahadev v. Daud Isalad Muhammad Husen, 6 Bom., A. C., 905*, dissented from. *Shuttleworth v. Laycock, 1 Vern., 245*, and *Jennings v. Jordan, L. R., 6 App. Cas., 698*, referred to. *TAJJO BIBI v. BHAGWAN PRASAD* [I. L. R., 16 All., 295

344. ——— Right of mortgagor making default in payment of mortgage-money at time fixed by decree for redemption—*Transfer of Property Act (IV of 1882), ss. 87, 89, 92 and 93.*—A mortgagor who has made default in payment of the mortgage-money within the time limited by the decree in a suit for redemption is not entitled to apply for execution of the decree after the time limited. *VALLABHA VALIYA RAJA v. VEDAPURATTI*

[I. L. R., 19 Mad., 40

345. ——— Decree for foreclosure—*Transfer of Property Act (IV of 1882), s. 87.*—Mortgagor's application for extension of time.—In a suit on a mortgage a decree for foreclosure was passed, a period of three months being fixed for the discharge of the mortgage-debt. The mortgagor having made default, the decree-holder applied for and was placed in possession of the property. The mortgagor, to whom no notice had been given of the decree-holder's application, then applied for and obtained an extension of time for payment, and he made the payment and recovered possession. *Held* that the order was right since no order absolute of foreclosure had been made after notice to the mortgagor *NARAYANA REDDI v. PAPAYYA* . . . I. L. R., 22 Mad., 133

346. ——— Mortgage with possession—Sale for arrears of revenue caused by default of mortgagee—Subsequent suit by mortgagor for redemption where mortgagee has become the purchaser.—Where mortgaged property was sold at a Government sale for arrears of revenue.—*Held* that, if the sale took place owing to the mortgagee's default, it would not affect the mortgagor's right to redeem. The general rule, that a Government sale for arrears of revenue gives a title against all the world, is subject to the exception that, if it is caused by the default of a mortgagee, it does not take away the

MORTGAGE—continued.**8. REDEMPTION—continued.**

mortgagor's right to redeem the mortgage to recover the land. *KALAPPA v. SHIVAYA*

[I. L. R., 20 Bom., 492

347. ——— Rights of redemption and foreclosure—Power expressly given to the mortgagee to call in his money before the expiry of the term, Effect of, on right to redeem—Limitation put on right to redeem—Agreement restraining the right of redemption.—The right of redemption and the right of foreclosure are always co-extensive, and from the postponement of the former the Court will infer an intention to postpone the latter in the absence of express provision on the point; where there is such express provision, giving the mortgagee power to foreclose at any time, any stipulation postponing the mortgagor's right to redeem is unilateral and void of consideration. A Court of equity will not enforce any agreement in restraint of the right of redemption which is oppressive and unreasonable as giving the mortgagee an advantage not belonging to the contract of mortgage. A mortgagor cannot, by any contract entered into with the mortgagee at the time of the mortgage, give up his right of redemption or fetter it in any manner by confining it to a particular time or a particular description of persons. *ABDUL HAK v. GULAM JILANI*

[I. L. R., 20 Bom., 677

348. ——— Right of lessee from ottidar to redeem—*Transfer of Property Act (IV of 1882), s. 91.*—A verumpattom tenant in Malabar claiming under a lease from the ottidar is entitled to redeem the prior kanam. *PAYA MATATHIL APPU v. KOVAMEL AMINA* . . . I. L. R., 19 Mad., 151

349. ——— Suit by legitimate son of illegitimate member of the family to redeem a mortgage made by a previous legitimate owner.—The right, of an illegitimate son in a Hindu family to receive maintenance from the family property is a purely personal right, and does not descend to his son. *Held* that the legitimate son of an illegitimate member of a Hindu family, who, as such illegitimate son, might have had right to maintenance from the property of his father, had no such interest in the estate belonging to the family as would entitle him to redeem a mortgage made by a previous rightful and legitimate owner of the estate. *BALWANT SINGH v. ROSHAN SINGH* . I. L. R., 18 All., 253

On appeal to the Privy Council—*ROSHAN SINGH v. BALWANT SINGH* . I. L. R., 22 All., 191
[4 C. W. N., 353

where, however, this point was not decided.

350. ——— Decree giving a defendant, second mortgagee, a right to redeem a prior mortgage within a fixed period—Effect of appeal—Limitation.—When a decree gives a right of redemption within a certain specified period with a certain specified result to follow, if redemption is not made within such period, the mere fact of an appeal being preferred against it will not suspend the operation of such decree, and, unless the Appellate Court extends the period limited by the original

MORTGAGE—continued.**S REDEMPTION—continued.**

decree-holder. Plaintiff having instituted this suit to set aside the said sale or to have it declared that it did not affect his right under the said annuity *Held*

its true construction, not a decree for sale, the case was one of attached property being sold at the instance of the mortgagee in execution of a money-decree, and so within the prohibition of s 93 of the Transfer of Property Act. The conditions under

decree and sale thereunder, or, if there is no mortgage by a decree for money and sale of the attached property, but they are not affected by a sale brought about in defiance of s 99, (a) that the suit was not barred by s. 144 of the Code of Civil Procedure, and that plaintiff was entitled to decree for the redemption of his share. **MATHURAMAN CHETTI v. ETIAPASAMI** I. L. R., 32 Mad., 372

361. — Right of redemption—Involuntary alienation—Execution proceedings—Revenue Sale Law (Act XI of 1859), ss. 13, 51—Sale for arrears of Government revenue—Mortgage—Sale in execution of mortgage decree.—A decree was obtained for the sale of a mortgaged property, being a share of an estate, on the 31st August 1882. In execution of that decree, the property was purchased by the plaintiffs on the 11th December

by the plaintiffs for the possession of the property

ties to the contrary, their right of redemption was extinguished. **HAN SHANAR PRASAD SINGH v. SHAW GOBIND SHAW** I. L. R., 23 Cal., 666 [A. C. W. N., 317]

MORTGAGE—continued.**S REDEMPTION—continued.****(b) REDEMPTION OF PORTION OF PROPERTY.**

333. — Right to redeem share of property where part has been sold for arrears of revenue—A mortgagor cannot redeem a share of the mortgaged property. This rule is not affected by the sale of part of the mortgaged lands for arrears of revenue. **HASHIM v. AJJEET SINGH** (W. R., 1864, 217

RAM BALUK SINGH v. RAM LOH DASS [21 W. R., 423]

364. — Payment of proportionate amount of debt—Right to retain property till whole is paid.—A zamindar is entitled to retain the whole property pledged to him until the whole debt has been paid to him. It is optional with him to relinquish any portion either on receiving a proportionate amount of what is due to him or otherwise. **HURENDR SINGH v. DABER SAHAR** [W. R., 1864, 280]

the entire debt. **RAZKHOODDEEN v. HARBHOOG SINGH** [W. R., 1864, 75]

366. — Redemption of whole estate by one of several mortgagors.—Mortgage debts are indivisible except where there is a distinct notice on the face of the mortgage deed of the separate shares of the mortgagors. One co-mortgagor or his representative may redeem the entire estate, if joint and undivided, by payment of the whole of the mortgage-money. **RAM KRISHN MANJHER v. AMERHOONISSA BIBEE** 7 W. R., 314

ALI REZA v. TARASOONDERER 3 W. R., 150

367. — Transfer of Property Act (IV of 1882), ss. 60, 52—Partial redemption—Contribution.—A mortgaged two houses to B for Rs 20. C purchased at a Court sale A's interest in one of the houses, and sold it to the plaintiff. The plaintiff sued to redeem the house, and prayed that the mortgage be ordered to convert it to her on payment of Rs 100. *Held* that the suit should be dismissed. **KUPPISAMI CHETTI v. PAPATHI AMMAL** I. L. R., 21 Mad., 368

368. — Payment of proportionate part of debt.—Where moneys were advanced to several mortgagors, who owned the mortgaged land in certain defined shares, and the mortgagor, by purchasing the interest of some of the mortgagors in such land, broke up the joint security, the remaining mortgagors were held to be entitled to

MORTGAGE—continued.**8. REDEMPTION—continued.**

357. ———— **Right of member of family to redeem—Mortgage by manager of undivided family—Sale of mortgaged property under money-decree obtained by mortgagee in respect of other debts—Purchase without leave of Court by mortgagee at Court-sale—Transfer of Property Act (IV of 1882), s. 99—Civil Procedure Code (Act XIV of 1882), s. 294.**—S, his son S D and his grandson the plaintiff D (son of a predeceased son) were undivided. In 1875 S mortgaged the property in dispute to H with possession. After S's death in 1877, S D managed the whole estate. In 1878, during D's absence from his native village, H sued S D as the heir and representative of S in respect of other debts, and, obtaining a money-decree against him, attached the mortgaged property in execution of the decree. After the attachment, H, without notifying or disclosing his mortgage-lien, caused several of the properties to be sold and, without obtaining leave from Court to bid at the sale, purchased some of them in the names of his defendants at an under-value and benami for himself. In 1892 D brought his suit against H, S D and the benami purchasers to redeem the properties so bought by H. The lower Courts found that the money-decree which H obtained and the execution-proceedings thereon bound the estate. It was contended that the execution-sales had not been objected to under s. 294 of the Civil Procedure Code and were therefore valid, and that the plaintiff consequently could not redeem. *Held* that the plaintiff might redeem, although he had not taken proceedings under s. 294. The fact that the mortgagee H had sold the property in execution of a money-decree did not free him from the liability to be redeemed as mortgagee. The sale was rendered nugatory, not by the provisions of s. 294 (though permission to bid granted under that section might have validated the purchase, but by the impossibility of a mortgagee by such sales and purchases freeing himself from the liability to be redeemed. **MARTAND BALKRISHNA BHAT v. DHONDO DAMODAR KULKARNI** . . . I. L. R., 22 Bom., 624

See **MAYAN PATHUTI v. PAKURAN**

[I. L. R., 22 Mad., 347

358. ———— **Money decree obtained by mortgagee—Execution—Sale of mortgaged property in execution—Purchaser at such sale—Title of such purchaser—Transfer of Property Act (IV of 1882), s. 99.**—Pr or to the passing of the Transfer of Property Act, a mortgagee obtained a money-decree against his mortgagor, and in execution sold the mortgaged property. The son of the mortgagee bought it at the sale. *He'd* that by his purchase at the execution-sale the son took an absolute title, and was not liable subsequently to be redeemed at the suit of the heirs of the mortgagor. **Martand Balkrishna Bhat v. Dhondo Damodar Kulkarni**, I. L. R., 22 Bom., 624, distinguished. *Semble* A third person purchasing mortgaged property *bona fide* at a sale in execution of a money decree obtained by the mortgagee against the mortgagor obtains a good title free from the mortgage-lien, unless the sale is made subject

MORTGAGE—continued.**8. REDEMPTION—continued.**

to it. **HUSEIN v. SHANKARGIRI GURU SHAMBHUGIRI** . . . I. L. R., 23 Bom., 119

359. ———— **Impossibility of mortgagee freeing himself by such purchase from liability to be redeemed—Transfer of Property Act (IV of 1882), s. 99—Purchase by mortgagee holding decree for sale, of portion of mortgaged property, subject to mortgage—Trust Act (II of 1882), s. 88.**—A mortgagee having obtained a decree against his mortgagor for the sale of the mortgaged property, a portion of the latter was subsequently sold, subject to the said decree, in execution of a money-decree obtained by a third party against the mortgagor. The mortgagee purchased the portion so sold, whereupon the mortgagor presented a petition under s. 258 of the Code of Civil Procedure, claiming that the mortgagee was bound to discharge his mortgage-debt, and should be called upon to certify satisfaction of his decree. *Held* that petitioner was not entitled to the relief prayed for, but only to proceed upon the footing that the portion of the mortgaged property which had been purchased by the mortgagee remained, notwithstanding such purchase, redeemable by petitioner together with the remainder of the property. On the question whether the purchase by a mortgagee of a portion of the mortgaged property at a Court-sale in execution of the money-decree of a third party involves a taking advantage by the mortgagee of his fiduciary position as mortgagee, — *Held* that the principle of the impossibility of a mortgagee freeing himself from his liability to be redeemed as affirmed in **Martand v. Dhondo**, I. L. R., 22 Bom., 624, and **Mayan Pathuti v. Pakuran**, I. L. R., 22 Mad., 347, was applicable, even in the absence of fraud or collusion between the mortgagee and the third party in execution of whose decree the purchase of the equity of redemption had been made, and that such a purchase contravened the principle underlying s. 99 of the Transfer of Property Act and expressed in s. 88 of the Indian Trusts Act. **ERUSAPPA MUDALIAR v. COMMERCIAL AND LAND MORTGAGE BANK**

[I. L. R., 23 Mad., 377

360. ———— **Right of son not party to suit to redeem his share—Mortgage of annuity—Sale of attached property at instance of mortgagee—Civil Procedure Code, s. 244—Transfer of Property Act (IV of 1882), s. 99.** *Contrary to provisions of.*—In 1848 an annuity had been settled on plaintiff's ancestor and his heirs in consideration of his withdrawal from a suit for partition then pending. In 1878 plaintiff's father and others then enjoying the annuity executed a bond for money due by them, mortgaging their rights under the said annuity. Instalments due under the bond having fallen into arrears, a suit was brought in 1889 in respect of them, and a decree obtained, which contained a provision that the right to the annuity should be liable to be proceeded against for the amount so due. Plaintiff was born in 1891. In 1893 an application was made for the issue of a proclamation of sale, and a sale ensued and a certificate was given to the purchaser, who was the

MORTGAGE—continued**8. REDEMPTION—continued.**

portion of the mortgaged property. **KUDHALI v SINGO DAYAL** **I L R., 10 All, 570**

378 ——— *Transfer of Property Act (IV of 1882), s 60—Suit to redeem entire mortgage by purchaser of equity of redemption*—The originally equity of who now is of the four items *Held* that he was entitled so to do A mortgage for an entire sum is from its very purpose indivisible, and that character of indivisibility exists with reference not only to the

the mortgage except in consonance with that principle of indivisibility **HUTHASANAY NAMBUDRI v PARAMESWARAY NAMBUDRI**

[I L R., 22 Mad., 209]

379 ——— *Purchase by one of several mortgagees of a portion of the mortgaged property—Redemption by one of the mortgagees of his own share*—The fact that one of several mortgagees has acquired the equity of redemption of the share of one of the mortgagees in the mortgaged property does not give another of the mortgagees the right to redeem his share in the

MAHTAB RAI v SANT LAL **I L R., 5 All, 276**

380 ——— *Usufructuary mortgage—Satisfaction of mortgage-debt from usufruct—Suit for whole mortgaged property by some of several mortgagees*—In a suit by some of several co-mortgagees to redeem the entire property mortgaged, on the ground that the mortgage debt had been satisfied out of the usufruct,—*Held* that the plaintiffs could only claim their own shares, and the Court of first instance should determine the extent of the shares after making the other co-mortgagees parties. **FAKIR BAKSH v. SADAT ALI**

[I L R., 7 All, 376]

381 ——— *Destruction of indivisible character of property*—Where the equity of redemption of different plots of land in the possession of a usufructuary mortgage under one entire contract has been sold to two different persons and the mortgagee has abandoned his possession of one plot, and taken a lease from the purchaser of that plot, and thereby destroyed the indivisibility of the original contract, the purchaser of the other plot is

MORTGAGE—continued**8. REDEMPTION—continued**

entitled to redeem his land on payment of a proportionate amount of the mortgage-debt. **MABANA ANMANNA v PENDIALA PERUMOTU**

[I L R., 3 Mad., 230]

382 ——— *Redemption of whole property by owner of portion—Proportional contribution*—The owner of a part of the equity of redemption can redeem the whole property mortgaged from the mortgagee after paying the whole of the money due on the mortgage, and has a lien on the share of the co-owner for the proportional contribution of that share to the sum expended in redemption, and this right or interest is as capable of transfer as the aggregate group of interests called the ownership *B* in one transaction mortgaged two fields (Nos. 20 and 22) to *J* On the 16th

V, to whom *B* again mortgaged the two fields as security *B* died, leaving a son *A*, whose interest in field No. 22 was conveyed by his grandfather (*B*'s father) to the plaintiff *A* was not a party to the conveyance, but attested it with an expression of assent The plaintiff now sued the defendant *V* to eject him from No. 22 *Held* that the defendant *V* had a lien on No. 22, and that the plaintiff could not eject him without paying him the amount of such lien When *R* purchased No. 22, he and *B* stood in equity *J* might sue against both leaving that recover the other On the other hand, *R* might redeem the whole and seek contribution from *B*, or *B* might redeem the whole and seek contribution from *R*. Whichever of the two redeemed, he would have a

share of the property viz, field No. 22. He then mortgaged his whole interest to the defendant *V*, including his lien on No. 22 *R* who had not yet obtained possession of No. 22 was entitled to get it

383 ——— *Purchaser of equity of redemption of part of an estate.—The purchaser of the equity of redemption of part of an*

and acquires a right to treat the original mortgagor as his mortgagor, and to hold that portion of the

MORTGAGE—continued**8 REDEMPTION—continued.**

mortgagees, who, on the occasion of the sale impugned, had sued to establish their claim to pre-emption, were not now entitled to question the sale, and, secondly, inasmuch as the estate, or the portion of it held by the persons whom the plaintiff claimed to represent was a joint estate, the plaintiff, having

NAME

391. *Purchase of portion of equity of redemption.*—The equity of redemption in two mouzahs (the mortgage being joint) was sold in satisfaction of a decree by a third party, and purchased partly by plaintiff and partly by the mortgagee himself. Held, on plaintiff's claim for redemption of the part of the mortgaged property purchased by him, that under such circumstances the whole burden of the mortgage debt could not be thrown on . . . the equity of redemption, and the plaintiff of the pro the whole, proportionate to the relative value of the mortgaged properties. **MANTAB SINGH v. MISRES LALL** [2 Agra, 88]

392. *Purchase of portion of equity of redemption.*—An entire mouzah had been mortgaged by way of usufructuary mortgage. The plaintiff subsequently purchased a four annas share from the heirs of some of the mortgagors, and sued for possession of his purchased share on the whole of the mortgage debt and interest. Held, that the plaintiff was entitled to the whole of the mortgage debt and interest. **DABER v. KISHAN LAL**

393. *Suits heard together brought by co-sharers of whole estate.*—A granted a usufructuary lease of certain lands to the defendants for a fixed term of years which was to continue after the expiry of the term so long as the money advanced remained unpaid. Shortly afterwards A evicted the defendants, and sold the land to C and D in the proportion of twelve annas and four annas. The defendants sued all the three, and obtained a decree for possession and mesne profits. They never got back possession, but recovered the mesne profits from A. On the expiry of the term of the lease his son C and D sued for the land. Held, that the suits should be heard together. **NETSUL SINGH v. SAEEDY**

[B. L. R., Sup. Vol., 613; 6 W. R., 340]

394. *Deposit of proportionate share of debt.*—Purchase of portion of equity of redemption by mortgagee. A mortgaged to B certain property, of which A caused a mortgage to be sold in execution of a money decree against

MORTGAGE—continued**8 REDEMPTION—continued.**

and himself became the purchaser. The moiety was sold subject to A's mortgage in satisfaction of another decree, and purchased by L. N. in exercise of his rights as mortgagee, attached and proceeded to sell the share of L in the portion purchased by him, and L thereupon, with a view to stay the sale, deposited an amount proportionate to the share held by him. The sale, however, was allowed to proceed. Held in a suit brought by L against N to set aside the sale, he was entitled to a decree. **NATHOO SAKHO v. LALAH ABEERU CHAND**

[15 B. L. R., 303; 24 W. R., 24]

395. *Equity of redemption, Attachment of.*—Payment of proportionate share of mortgage debt.—A, the holder of a decree upon a mortgage bond, attached in execution a one third share of a certain mouzah, one of seventeen mouzahs included in the mortgage, and the equity of redemption in which one third share had been purchased by B. Held that although, as laid down in *Asimut Ali Khan v. Jowahir Singh*, 13 Moore's I. A., 404, B would have been at liberty to insist that his one third share should be burdened with no more than a proportionate amount of the original mortgage debt, and might claim to redeem such share upon payment of that quota, yet, as he had not shown what that proportion was, nor paid it into Court, that A under the circumstances was entitled to enforce his attachment. **HIRSH NARAY v. ATTAOULLAH**

[L. L. R., 4 Cal., 72; 2 C. L. R., 580]

396. *Contribution.*—Suit for redemption of share of property sold in execution of decree for mortgage debt.—M, B, and N held mouzah D in equal one-third shares, and M also held a share in mouzah A. On the 3rd January 1863 M and N sold their shares in mouzah D to L to secure

R to secure . . . a separate deed, they mortgaged mouzah A, and M mortgaged his share in mouzah A to R, to secure a loan of 1 . . . obtained a . . . D in mouzah debt due to . . . a decree for . . . to him for . . . mouzah A. . . M and B in mouzah D were sold in execution of a decree, and were purchased by L. A portion of the purchase money was applied to satisfy the mortgage of A, and the balance of 1 was deposited in Court. Held, that the mortgage of A was subject to the mortgage of R, and that R was entitled to redeem the share of L in mouzah D. **NETSUL SINGH v. SAEEDY**

MORTGAGE—continued.**8. REDEMPTION—continued.**

estate in which he would have no interest but for the payment as a security for any surplus payment he may have made. *ASANSAB RAYUTHAN v. VAMANA RAO* . . . I. L. R., 2 Mad., 223

384. ———— *Assignee of portion of equity of redemption—Suit for redemption.*—In a suit by a person to whom seven-eighths of the equity of redemption had been assigned for redemption, it was held that the plaintiff was entitled to redeem the whole mortgage, although he was assignee of only seven-eighths of the equity of redemption, as the owner of the remaining one-eighth was joined as defendant, and did not apply to be made plaintiff. *NAINAPPA CHETTI v. CHIDAMBARAM CHETTI* [I. L. R., 21 Mad., 18

385. ———— *Mortgage of property owned by co-sharers—Subsequent severance of interests—Suit by one co-sharer to redeem more than his share—Time of taking objection.*—In 1805 a two annas share in certain property held by co-sharers was mortgaged to the defendant. The mortgage was effected by the mortgagor as manager of all the co-sharers in union. In 1848 one of the co-sharers redeemed his share of two pies in the mortgaged property, and a further share of two pies therein was redeemed by a second co-sharer in 1867. The plaintiff was admittedly the owner of another two pies share; but he now sued the defendant to redeem the whole of the property still unredeemed, viz., a one anna eight pies share of the original mortgage. The defendant objected that the plaintiff could only redeem his own two pies share, which had become separated from the rest. The plaintiff denied that the estate had been divided. *Held* that the plaintiff's claim being to redeem all that remained of the estate in the mortgagee's possession, the suit could not be maintained, unless all the other persons interested in the equity of redemption were before the Court either as co-plaintiffs or as defendants. Without their presence, the suit could not be properly disposed of, and the excuse, that the defendant did not take objection at the right time, had, under such circumstances, no validity. As owner of a two pies share, which by consent of all interested had become an estate wholly separated from the other parts of the original aggregate, the plaintiff would have been bound to set forth the transactions on which his right rested. *RAGHO SALVI v. BALKRISHNA SAKHARAM* . . . I. L. R., 9 Bom., 128

386. ———— *Partial redemption—Beng. Reg. I of 1798, s. 5.*—Where the contract between a mortgagor and a mortgagee provides for the payment of the principal sum on a specified date, and for the payment in the meantime of interest thereon, the mortgagor cannot have a partial redemption of the property under Regulation I of 1798, which was not intended (s. 5) to alter the terms of a contract settled between the parties except as regards illegal interest. Should the mortgagee consent to allow the principal sum, or part of it, to be paid off before the time fixed, he would be entitled, when agreeing to this, to make the payment of interest a condition of

MORTGAGE—continued.**8. REDEMPTION—continued.**

such redemption. *BURNO MOYEE DOSSEE v. BRUNODE MOHINEE CHOWDHRAIN* . 20 W. R., 387

387. ———— *Property redeemable on payment of two separate amounts.*—Where a certain quantity of land was the subject of one zur-i-peshgi mortgage redeemable on payment of R225 to K and R275 to M, the mortgages taking possession in moieties, it was held that the mortgagor could not recover any portion of the land until he had paid up all the money due upon the mortgage, e.g., as long as he had not paid up the amount due to M, he could not claim even the land allotted to K, whose portion had been liquidated. *IMAM ALI v. OOGRAH SINGH* . . . 22 W. R., 282

388. ———— *Purchase of portion of equity of redemption by mortgagees—Apportionment of mortgage-debt.*—The plaintiffs in this suit were purchasers of the equity of redemption in a portion of certain mortgaged premises which were sold in lots, and they brought this suit against the mortgagees, who were also purchasers of the equity of redemption of several of the lots. They made the purchasers of the other lots parties to the suit, and sought to redeem their own portion of the estate and to recover possession of their own portion and the portion purchased by the purchasers other than the mortgagees, on payment into Court of a sum sufficient to cover the proportion of the mortgage-debt attributable to the said parcels. The mode of applying the whole of the mortgage-debt between the different mouzabs of the mortgaged estate in such a case pointed out. *AZIMUT (AJIMUT) ALI KHAN v. JOWAHIR SINGH*

[14 W. R., P. C., 17: 13 Moore's I. A., 404

BHIRON SINGH v. DEEN DYAL LALL

[24 W. R., 47

389. ———— *Mortgage of one estate consisting of several villages—Purchase by mortgagee of part of equity of redemption.*—Where sixteen villages were included in one mortgage and the equity of redemption in one village was sold to the plaintiffs, *Held* that they were entitled to sue the mortgagee, who had purchased the equity of redemption in twelve of the villages, for redemption of their own and three other villages; a previous suit for redemption of their one village having been dismissed on the objection of the mortgagee that they were not entitled to sue to redeem their one village alone. *AHMED ALI KHAN v. JAWAHIR SINGH*

[1 Agra, 3

390. ———— *Purchase of equity of redemption of part of village.*—The entire village was mortgaged to the defendants, who subsequently obtained by purchase the equity of redemption as to a portion of it. The equity of redemption in another portion was sold to two other persons jointly, one of whom (the plaintiff) claimed to represent by purchase, the other by descent. The plaintiff having sued to redeem the whole share, the defendants questioned the validity of the sale to the persons through whom the plaintiff claimed, and impugned the plaintiff's right as heir. *Held* that the

MORTGAGE—continued

8 REDEMPTION—continued

402. — Purchase by third parties of mortgagee's interest in portions of mortgaged property—Redemption and apportionment of liability of purchasers for the mortgage

mortgagee. In a suit brought by the mortgagee against the representatives of one of the said purchasers who refused to deliver possession of the portion,—*Held* that (a), as this purchaser had disclaimed the right to redeem the portion, and had alleged a paramount title, causing the dismissal of the suit as against him, he and those claiming under him were precluded from afterwards claiming to redeem, and (b) the proportion of mortgage charge for which he was liable could not be apportioned by the taking an account as between him and the mortgagee also, in the absence of the purchasers of the other portions. *Amrut Ali Khan v Jowahir Singh*, 13 Moore's F. A., 404, referred to. A decree which ordered that the defendants without any account being taken at all, should retain possession of the portion purchased

being reversed. *NILKANT BANERJI v SURESH CHANDRA MULLICK*

[L. L. R., 12 Calc., 414; L. R., 12 I. A., 171]

403. — Right of one of several joint mortgagors to redeem the whole estate.—*Far* of joint fat certain share was mortgaged as the entire estate has a right to redeem the whole estate, seeking his contribution from the rest. The rule is the same as

which had been jointly mortgaged by S, the owner of one-half share of the talukam, and H, the eldest of the four sons of P, the owner of the remaining half share. The plaintiffs were the owners, by purchase at two Court-sales, of the equity of redemption of two out of the eight pie share belonging to S, and of one quarter of the eight pie share belonging to P. One of these sales was in execution of a

MORTGAGE—continued

8 REDEMPTION—continued

decree against H, the eldest of the five sons of S and the other in execution of a decree against H. After the institution of the suit, the defendants

be owners of a four pie share in the talukam. Pending the appeal in the District Court, the defendants allowed L, the grandson of P, to redeem a two pie share, and L's brother, R, to redeem a pie share. *Held* that, as the sixteen pie talukam of the khoti village, though held in certain shares by the original mortgagor, was undivided family property, which was mortgaged as a whole and for an entire sum, the plaintiffs as owners by purchase of a part of the equity of redemption, had a right to redeem the whole of the sixteen pie talukam, and this right could not be affected by the conduct of the defendants *post litem motam* either by their purchase of a share in the equity of redemption pending the suit, or by the partial redemption allowed by them pending the appeal. *Held* also that the defendants had no power to permit partial redemption, as before partition none of the co-sharers could redeem any particular share. *NARO HARI BHAYE v VITHALBHAT*

[L. L. R., 10 Bom., 849]

SARHARAM NARAYAN v GOPAL LAKSHMAN

[L. L. R., 10 Bom., 856 note]

ALIKHAN DAUDKHAN v MAHOMADKHAN SHAM-SHERKHAN DESMUKH

[L. L. R., 10 Bom., 858 note]

404. — Sale by mortgagor of part of mortgaged property pending redemption suit.—Sale by mortgagor of rest of mortgaged property after decree for redemption.—Application by purchasers for execution of decree.—Subsequent suit for redemption by one purchaser.—*Sale pendente lite*.—One M sued the defendant R for partition. The defendant pleaded a prior partition, and alleged that the property which M now sued to recover had been mortgaged by M to him (the defendant). Pending the suit, M sold to the plaintiff a portion of the property claimed from the

purchasers (viz., the plaintiff and H S) then made a joint application for execution of the decree for redemption. The Subordinate Judge held, as to the plaintiff, that the plaintiff having purchased *pendente lite*, and having become M's assignee prior to the decree, was not entitled to come in under a. 232 of the Civil Procedure Code (Act X of 1877) to get the decree enforced, and on 6th March 1880 an order was made that H S should redeem the whole property on payment of 1100 and costs. H S subsequently sold his interest to the mortgagee, R. In

MORTGAGE—continued.**8. REDEMPTION—continued.**

in a suit by *N* against *R*, in which he claimed that the sum due by him under the two mortgages dated the 15th March 1870, and the decree dated the 16th April 1876, might be ascertained, and that, on payment of the amount so ascertained, the sale of his one-third share in mouzah *D* might be set aside, and such share declared redeemed. *Held* that the sale of *N*'s share in mouzah *D* could not be set aside. *Held* also that, if it were shown that the sum realized by the sale of his one-third share in mouzah *D* exceeded the proportionate share of his liability on the two mortgages, he was entitled to recover one moiety of such excess as a contribution from mouzah *A*. As it appeared that there was such an excess, the Court gave *N* a decree for a moiety of such excess, together with interest on the same from the date of the sale of *N*'s share at the rate of 12 per cent. per mensem; and further directed that, if such moiety, together with interest, were not paid within a certain fixed period, *N* would be at liberty to recover it by the sale of the share in mouzah *A*, or so much thereof as might be necessary to satisfy the debt. **BNAGIRATHI v. NAUBAT SINGH**

[I. L. R., 2 All., 115]

397. ———— *Sale of equity of redemption of two parcels—Second mortgage of six parcels and redemption of one by mortgagor—Transfer of Property Act, s. 60—Redemption by purchaser of two parcels on payment of proportionate amount of debt decreed.*—In 1873 *R* mortgaged to *S* seven parcels of land (items 1-7) for Rs300. In 1880 *M* purchased *R*'s rights in items 1 and 2. In 1881 *R* redeemed item 5 on payment of Rs20, and executed a second mortgage of the rest to *S* for Rs200. *Held* that *M* was entitled to redeem items 1 and 2 on payment of a proportionate amount of the first mortgage-debt. **SUBRAMANYAN v. MANDAYAN** I. L. R., 9 Mad., 453

398. ———— *Breaking up security—Mortgagee allowing mortgagor to pay a portion of the mortgage-debt and releasing part of the mortgaged property—Transfer of Property Act (IV of 1882), s. 60.*—A mortgagee, by allowing his mortgagor to pay a portion of the mortgage-debt and releasing a proportionate part of the mortgaged property, does not thereby entitle the mortgagor or his representative to redeem the rest of the mortgaged property piecemeal. **Marana Ammanu v. Pandyala Perubotulu**, I. L. R., 3 Mad., 230, and **Subramanyan v. Mandayan**, I. L. R., 9 Mad., 453, not followed. **LACHMI NARAIN v. MUHAMMAD YUSUF** [I. L. R., 17 All., 63]

399. ———— *Subsequent mortgage of same land—Decree on first mortgage—Effect of sale in execution of some of mortgaged land and purchase by subsequent mortgagees subject to their own mortgage—Subsequent suit by mortgagors for redemption of lands other than those sold—Apportionment of mortgage-debt.*—In 1874 plaintiffs mortgaged to one *S* seven fields, of which four were Survey Nos. 22, 23, 40, and 41. In 1876 they mortgaged these same four fields with other lands to the defendants. In 1877 *S* obtained a decree upon

MORTGAGE—continued.**8. REDEMPTION—continued.**

his mortgage, and in execution sold only Nos. 22, 23, and 41, which realized sufficient to satisfy his decree. These three fields were, on the application of the defendants, sold subject to their mortgage, and they themselves purchased them at the sale. The plaintiffs now sued to redeem the remaining lands comprised in the mortgage of 1876, exclusive of those which had been sold in execution. *Held* that they were entitled to redeem this part of the mortgaged property, as the mortgagees had themselves acquired the plaintiffs' (mortgagors') interest in the other part and so severed their claim under the mortgage. *Held* also that the plaintiffs were entitled to redeem on payment of such portion of the mortgage-debt as remained after deducting the portion of it to which the lands purchased by defendants were liable. **PIRJADA AHMAD-MIYA PIRMAXA v. SHA KALIDAS KANJI**

[I. L. R., 21 Bom., 544]

400. ———— *Hindu law—Widow's estate—Mortgage by two co-widows—Sale of equity of redemption in execution of decree against one widow—Suit to redeem by other widow—Decree for redemption of moiety on payment of moiety of mortgage amount.*—A mortgage of ancestral estate having been made by *A* and *B*, two Hindu co-widows, the equity of redemption of the said estate was sold in execution of a decree for money against *B* only and purchased by the mortgagee. *Held* that *A* was entitled to redeem only a moiety of the estate during the lifetime of *B*. **ARIYAPUTRI v. ALAMELU** I. L. R., 11 Mad., 304

401. ———— *Transfer of Property Act (IV of 1882), s. 60—Effect of purchase by mortgagee of portion of the mortgaged property.*—The purchase of a part of the mortgaged property by a mortgagee, subject to his mortgage, has not necessarily the effect of fully discharging the mortgage, without regard to the value of the property purchased and the price paid for it, whether such purchase be made in execution of a simple decree for money or in execution of a decree obtained by the mortgagee himself upon a subsequent mortgage, although it is possible that under some circumstances such purchase may have the effect of extinguishing the mortgage. **Ahmad Wali v. Bakar Husain**, *Weekly Notes All.*, 1883, p. 91, overruled. **Azimut Ali Khan v. Jowahir Singh**, 13 Moore's I. A., 404; **Nilakant Banerji v. Suresh Chandra Mullick**, I. L. R., 12 Calc., 414; **Mahtab Singh v. Misree Lal**, 2 Agra, 88; **Bitthul Nath v. Toolsee Ram**, 1 Agra, 125; **Kesree v. Seth Roshun Lal**, 2 N. W., 4; **Kuray Mal v. Puran Mal**, I. L. R., 2 All., 565; **Mahtab Rai v. Sant Lal**, I. L. R., 5 All., 276; **Sumera Kuar v. Bhagwant Singh**, *Weekly Notes, All.*, 1895, p. 1; **Chunna Lal v. Anandi Lal**, I. L. R., 19 All., 196; **Khwaja Baksh v. Imaman**, *Weekly Notes, All.*, 1895, p. 210; **Ballam Das v. Amar Raj**, I. L. R., 12 All., 537; and **Bisheshar Singh v. Laik Singh**, I. L. R., 5 All., 257, referred to. **NAND KISHORE v. HARI RAJ SINGH**

[I. L. R., 20 All., 23]

MORTGAGE—continued**8 REDEMPTION—continued.**

this time *R* did not raise any objection to the property being sold, although he was fully aware of the fact. *R* had also admitted, in a suit brought against him in 1850 by *A*, that he had sold the land to *A*. In a suit brought by *R* against *A* in 1867 to redeem the mortgaged property, — *Held* (following the decision in *Ramji bin Takaram v. Chinto Sakharam*, 1 Bom, 199) that *R* was entitled to redeem the property
RAMSHET BACHASHET v. PANDHARINATH
 [8 Bom., A C, 238]

See **KRISHNAJI alias BABAJI KESHAJI v. RAJJI SADASHIJI**
 9 Bom., 79

410 ————— *Gahan lahan clause* — Since the decision of the case of *Ramji bin*

containing a proviso that, if not redeemed within a certain fixed time, they will be considered as converted into absolute sales) as redeemable, notwithstanding that such fixed time has expired. Such practice has proved beneficial, and should be adhered to. *Ramji bin Takaram v. Chinto Sakharam*, 1 Bom, 199, and the cases decided in accordance with it, referred to and followed. **SHANKARADHAI GULABDHAI v. KASSINHAJI VITHALDHAI**
 9 Bom., 69

RANCHANDRA BABA DATTRE v. JAYARADHAI APAJI
 [1 L. R., 14 Bom., 19]

412 ————— *Mortgage with clause of conditional sale — Gahan lahan — Merger — Admissions in depositions or pleadings — Estoppel.* — The land in dispute was mortgaged with possession to the father of the defendant by the father of the plaintiffs in 1854, on condition that the same was to be considered as sold to the mortgagee if Rs. 40 were not paid to the mortgagee within five years from the date of the mortgage. No such payment, however, was made. In 1860 the plaintiffs' father executed to defendant's father another deed respecting other land, which deed mentioned the land in dispute as being in the possession and enjoyment of the same mort-

of the land mortgaged. The mortgagee objected to the claim, but his objection was overruled, and the

MORTGAGE—continued.**8 REDEMPTION—continued**

account was taken, allowing Rs. 40 as the consideration for the sale of the land under the conditional sale

force in the Presidency of Bombay with regard to mortgages containing clauses of conditional sale, whether executed before or after 1864. *Held* also

or prevent the mortgagees (plaintiffs) from redeeming their property. **ABDUL RAHIM v. MADHATRAY APAJI**
 1 L. R., 14 Bom., 78

413 ————— *Agreement in a subsequent deed to postpone redemption until payment of another debt.* — An agreement contained in a deed executed for a fresh consideration subsequent to a mortgage deed to postpone redemption of the mortgage until the payment of another debt which has not been made a charge on the land is valid. **KRISHNAJI v. MAHESHWAR LAKSHMAN GONDHA LEXAR**
 1 L. R., 30 Bom., 348

But see **ABDUL HAK v. GULAM JILANI**
 [1 L. R., 20 Bom., 677]
 and **SARI v. MOTIRAM MAHADU**
 [1 L. R., 23 Bom., 375]

414 ————— *Conditional sale.* — A mortgagor stipulated by an instrument in writing that if he failed to repay the sum lent on mortgage within three years, the property mortgaged was to be held an absolute sale. *Held* that the mortgagor was entitled to redeem although the amount lent had not been repaid within three years. **NALLAYA GAUNDAN v. PALLASI GAUNDAN**
 2 Mad., 420

415 ————— *Usufructuary mortgage.* — The plaintiff executed an usufructuary mortgage of certain land for a term of twenty two years to the first defendant, for the consideration stated in a written instrument of mortgage, dated the 21st of January 1863. The mortgage instrument contained a stipulation that possession should be given to the plaintiff upon his paying the principal and interest due to the first defendant within two months from the date of the execution. *Held* that

MORTGAGE—continued.**8. REDEMPTION—continued.**

1880 the plaintiff brought the present suit for redemption against *M* (the mortgagor) and the defendant *R* (the mortgagee), alleging (*inter alia*) that *M*, having sold the property, had not sought to execute the former decree for redemption. The defendant *R* in his written statement alleged that the sale by *M* to the plaintiff was fraudulent; that the plaintiff as purchaser from *M* had not applied to be made a party to the former suit; that *M* having failed to redeem as ordered by the said decree within the period specified, neither he nor the plaintiff was now entitled to sue. *Held* that the plaintiff's suit was unsustainable. By the sale to the plaintiff the rights of *M* came to the plaintiff subject to the result of the suit then pending in which he did not choose to get himself made a co-plaintiff. When the decree was passed, it was only through a right derived from *M* that the plaintiff could have *avocatus* *et* *audi* in the further proceedings, and he applied for execution in absence, and therefore as representative of *M* under s. 214 of the Code of Civil Procedure (X of 1877). As such representative, he might have appealed, but did not, against the order of the 6th March 1880, passed on the application made by him jointly with *H* & S. He had this right of appeal as representative of *M*, but he could not bring a fresh suit. If he was not a representative of *M*, then he was a stranger to the proceedings under the decree; and as *M* took no steps to fulfil the decree, the right to redeem was foreclosed in six months from the date of the decree, *i.e.*, in May 1881. The plaintiff could not, by any step, prevent the right of the defendant as mortgagee against *M* from growing and perfecting itself during the six months allowed for redemption. *RAMCHANDRA KOLATKAR v. MAHARAJI KOLATKAR*. [I. L. R., 9 Bom., 141]

405. ———— *Right to redeem share coming to person by inheritance.*—The plaintiff recognized the validity of a mortgage for a term of twenty years of her deceased father's estate made in 1754 by her two brothers, nor did she dispute the sale in 1863, after the death of the brothers, of the estate to the mortgagees by *M*, her mother, describing herself as sole owner, as a transfer of *M*'s rights. She claimed to have a right to redeem from the mortgage in 1851, in due course of time, the share in the estate which devolved upon her by right of inheritance from her father and brothers, the sale-deed of 1863 notwithstanding. The purchase-money under the sale-deed represented personal debts of *M* and *N*, one of the brothers. The plaintiff did not claim as an heir of *M*, whose death was not known for certain. *M* did not profess in the sale-deed to be acting for her daughter either as guardian or as one of *N*'s heirs managing for them all. The plaintiff was apparently not a minor at the time, and *M* was not an heir of *N*, being his step-mother. Under Mahomed law, she could not have disposed of her daughter's property as her guardian, and not being one of *N*'s heirs she could not deal with his estate on behalf of his real heirs. At the time of sale half the mortgage term had not expired, the mortgage-debt was not claimable at the time, and the sale with a view to its liquidation

MORTGAGE—continued.**8. REDEMPTION—continued.**

was unnecessary. Under these circumstances, the plaintiff's claim was decreed. *IMAMAN v. LATTA BUKARI*. 7 N. W., 343

408. ———— *Redemption of a share of mortgage property upon payment of proportionate debt—Parties—Transfer of Property Act (IV of 1852), s. 60—Interest.*—Where a suit was brought upon a mortgage against the original mortgagor, and upon the latter's death all his heirs were not brought on the record and in execution of the decree thus obtained the mortgaged property was sold, *Held* that, in a suit by the heirs not on the record, they were entitled to redeem their share of the mortgaged property upon payment of a proportionate share of the mortgage-debt. *SURYA BINI v. MONINDRA NATH ROY*. 4 C. W. N., 507

(c) REDEMPTION OTHERWISE THAN ON EXPIRY OF TERM.

407. ———— *Redemption after expiry of time—Mortgage becoming absolute on default of redemption—Security for repayment of loan.*—Where an instrument of mortgage, though in terms it transfers an estate on failure to repay the mortgage-money on a fixed day, yet appears clearly to have been entered into by the parties for securing repayment of a loan, the mortgagor, making the security subservient for the purpose for which it was created, may in equity and good conscience redeem the property by paying off the principal debt and interest, though the stipulated time for payment has been allowed to pass by. *RAJJI DIN TUKARAM v. CHINTO SAKHARAM*. 1 Bom., 199

MUHAMMAD WALAD ABDUL MULNA v. IBRAHIM WALAD HASAN. 3 Bom., A. C., 180

408. ———— *Conditional sale—Dhristabandhaka.*—A *dhristabandhaka*, or Hindu instrument by which visible property is mortgaged, which names a time for payment of the money borrowed, and stipulates that on default the mortgagee shall be put into exclusive possession and enjoyment of the property, will not be treated strictly as a conditional sale, even though the instrument expressly provides that on default the transaction shall be deemed an outright sale; and in a suit by the mortgagee for possession, the Court, in decreeing the right thereto, will give the mortgagor a day for redeeming. *VENKATA REDDI v. PARVATI AMMA* 1 Mad., 460

409. ———— *Mortgage for fixed term.*—*R* mortgaged certain land to *A* in 1844, stipulating that, if he (*R*) failed to pay a moiety of the mortgage-money within three years or wholly redeem within five years from the date of the mortgage, the property mortgaged should be considered as sold to *A*. The property remained in the possession of *R* till 1847, at the end of which he gave it into the possession of *A*, *R* then believing that he had thereby lost all right to the property. Subsequently to 1847, the property changed hands. The absolute right was first sold in 1855, and then on two occasions in 1862. At

MORTGAGE—continued.**8 REDEMPTION—continued**

not expired. *Held* that the suit was unsustainable, because prematurely instituted, the mere use of the word "within" not being a sufficient indication of the intention of the parties that the mortgagor might redeem in a less period than ten years. *VADJU v VADJU*, I. L. R., 5 Bom., 22

424. — *Transfer of Property Act (IV of 1882), ss 60, 62—Mortgage containing covenant to repay "within" a given time—Mortgagee's right to foreclose* Certain premises were mortgaged with possession in 1836,

ment of mortgage money is *prima facie* intended for the benefit of the mortgagor, the parties to an instrument of mortgage may, however, by the language of their contract, show their intention that redemption may take place only at the end of a given term. The covenant as worded, so far from showing an intention to preclude the mortgagor from redeeming, reserved the liberty to redeem at pleasure. *Vadju v Vadju*, I. L. R., 5 Bom., 22, and *Tirunana Sambandha Pandara Sannadhs v. Nallatambi*, I. L. R., 16 Mad., 456, considered. *ROSS ANNAI v RAJARATHNAM ANNAI*

(I. L. R., 23 Mad., 33

425. — *Usufructuary*

abatement), was to retain the rest of the jumma as

entitled to enter into possession before the expiry of the term of the lease, nor could he then enter even if the transaction were viewed as a *kuri* pledge. *LORV ALY v. GUJRAJ THAKOOR*, 11 W. R., 408

426. — *Usufructuary mortgage—Suit for redemption on deposit of balance due*—A executed an *ikrar* by way of mortgage, whereby it was stipulated that B, the mortgagor, was to remain in possession of the mortgaged premises for a period of eight years; that the amount due was to be paid off from the usufruct; and that, if at the expiry of that period any sum should remain due under the *ikrar*, A was to pay the same. In

MORTGAGE—continued**8. REDEMPTION—continued**

a suit for redemption brought before the expiry of the period mentioned in the *ikrar* on deposit of the amount due thereunder, — *Held* that the suit would not lie. *CHANDRA KUMAR BANERJEE v. ISWUR CHANDRA NEWGI*

[6 B. L. R., 563; 14 W. R., 455

BUT see *DINDOYAL SHAH v. GANESH MAHATUN* [6 B. L. R., 58 note; 13 W. R., 528 note

which, however, was decided on the supposition that the mortgage was executed previously to Act XXVIII of 1855. *SURJAN CHOWDHRY v. IMAMBANDI BEGUM*, 6 B. L. R., 566 note

[12 W. R., 527

accrued, and that therefore the action was premature. *LILA MORJI v. VASUDEV MORESHAN GANPUER*, 11 Bom., 283

428. — *Mortgage for fixed term*—Where money was lent on mortgage

mortgages before the expiration of that time. *SREE MUNT DUTT v. KRISHNANATH ROY*, 25 W. R., 10

429. — *A mortgage*

year," and that upon failure by the mortgagor to

to documents of the kind, and that, while on the one hand the mortgagee could not enforce his rights during the period of ten years, on the other hand the mortgagor was not entitled, before that period had

MORTGAGE—continued.**8. REDEMPTION—continued.**

the plaintiff was entitled to redeem, although the amount of principal and interest had not been paid or tendered within two months. *DORAPPA v. KUNDIKURI MAJLIKARJUNUDU* . . . 3 Mad., 363

416. ————— *English law—Construction.*—The decisions of the Sudder Court at Madras carried the doctrine of relief after the time named in the conveyance so far as to say that wherever the security for money is an object of the transaction, no sale can become absolute. The High Court have followed the English rule, and have held the question one of construction—admitting, however, for the purpose of the construction, other documents and oral evidence. *LAKSHMI CHELIAH GARU v. SRIKRISHNA BHUPATI DEVU MAHARAJ GARU, ZAMINDAR OF MADUGULU* . . . 7 Mad., 6

417. ————— *Power of sale by mortgagor—Reasonable time—Suit to remove attachment.*—Claim by a mortgagee to remove an attachment, placed by a judgment-creditor of the mortgagor, on the ground that the entire ownership of the property had passed to him at the date of attachment. The mortgagee had never had possession of the mortgaged property; and by the stipulations of the deed the mortgagor had a power of sale after the expiration of the time fixed for the payment of the debt, and it was only on the failure to exercise this power that the proprietary title would pass to the mortgagee. *Held* that, under a condition of this character, a reasonable time must be allowed for the exercise of the power of sale, and that the fact that no sale had taken place within an interval of twenty-three days from the date fixed for payment could not equitably be held to divest the mortgagor of the equity of redemption; that consequently at the time of attachment the defendant was only a mortgagee, and the suit to remove the attachment could not be maintained. *KONER MANOHAR MAHAJAN AMBEKAR v. NARO HARI DASPUTRE* [1 Bom., 167

418. ————— *Redemption before expiry of time—Suit for redemption of zur-i-peshgi mortgage.*—A mortgagor who has granted a zur-i-peshgi lease can sue to recover possession of his lands before the expiry of the term fixed by the lease, on the ground that the mortgage-debt has been satisfied by the mortgagee's receipts while in possession. *PUNJUM SINGH v. AMEENA KHATOOM* [6 W. R., 6

419. ————— *Mortgagor entitled to redeem before expiration of term unless mortgagee can show that the term binds mortgagor—Usufructuary mortgage.*—No such general rule of law exists in India as would preclude a mortgagor from redeeming a mortgage before the expiry of the term for which the mortgage was intended to be made unless the mortgagee succeeds in showing that by reason of the terms of the mortgage itself, the mortgagor is precluded from paying off the debt due by him to the mortgagee. Where parties agree that possession of any property shall be transferred

MORTGAGE—continued.**8. REDEMPTION—continued.**

to a mortgagee by way of security and repayment of the loan for a certain term, it may be inferred that they intended that redemption should be postponed until the end of the term, though the creation of a term is by no means conclusive on the point. The term fixed for payment of a debt should be presumed to be a protection only for the debtor till a contrary intention is shown. *BHAGWAT DAS v. PARSHAD SING* . . . I. L. R., 10 All., 602

420. ————— *Transfer of Property Act, ss. 60, 62 (a)—Mortgage with possession—Time for redemption of mortgage—Provision for discharge of debt out of income.*—In 1885 the plaintiffs mortgaged certain land to the defendants, and placed them in possession under a mortgage-deed, which provided that the profits of the land should be taken towards the discharge of the mortgage-debt, and that, when it was so discharged, possession should be surrendered to the mortgagor. In a suit in which the plaintiffs asked for an account and for a decree for redemption on payment by them of the balance that might be found due on the mortgage, it appeared, on accounts being taken of the proceeds of the land, that the principal and interest had not been discharged thereby. *Held* that the right to redeem had not accrued to the plaintiffs, and that the suit should be dismissed. *THIRUGNANA SAMBANDHA PANDARA SANNADHI v. NALLATAMBI* [I. L. R., 16 Mad., 486

421. ————— *Mortgage for fixed period—Act XXVIII of 1855.*—*Held* that a mortgage effected for a fixed period subsequent to Act XXVIII of 1855 coming into operation, is not redeemable until the period for which it was effected has expired, and that under the circumstances the mortgagor's remedy was to sue for the balance of the mortgage-loan which had not been paid to them. *MUN PEARY v. SHIVA DEEN* . . . 1 Agra, 91

422. ————— *Hindu and English law.*—The same principle exists both in the English and the Hindu law that the right of the mortgagor to redeem does not, in the absence of any circumstances or language indicating a contrary intention, arise any sooner than the right of the mortgagee to foreclose, and therefore a suit for redemption of a Hindu mortgage cannot be brought before the time fixed by the mortgage for the payment of the mortgage-money. *SAKHARAM NARASIMHA SARDESAI v. VITHU LAKHA GOUDA* [1 Ind. Jur., N. S., 250; 2 Bom., 237 2nd Ed., 225

423. ————— *Cause of action—Mortgage for fixed term.*—The general principle as to redemption and foreclosure is that, in the absence of any stipulation, express or implied, to the contrary, the right to redeem and the right to foreclose are co-extensive. A mortgage-deed, dated the 30th April 1870, stipulated that the mortgagor would pay the debt, with interest, within ten years and redeem the mortgaged property. In a suit instituted on the 30th July 1877 for the redemption of the property the mortgagee contended that the time ha

MORTGAGE—continued**8 REDEMPTION—continued**

that the mortgagor saved his estate from foreclosure by depositing the money in Court on the first day after the 25th November on which the Court was open. The mortgagor having the option either of Court or of e for not bound to
DABER
J. R., 223

to make it a proper tender the plaintiffs should not only have paid the money into Court in the month of Jeth, but were bound to see that the mortgagee in possession had due notice of such payment. **MITIA NUNDA v. MYA RAN** 3 N W, 80

443. ——— *Right of purchaser to redeem usufructuary mortgage—Limitation*—A sar-i-pesghi lease, being nothing but a simple mortgage, may be cancelled on proof of discharge of the advance, with interest from the usufruct, or on payment of the money in cash. The purchaser
CHOWDRE

NUND LALL v. BALUK 3 Agra, 123

444. ——— *Deposit of mortgage money—Tender—Notice of deposit*—A deposit of the mortgage money by a mortgagor, accompanied

ACHROO SINGH, HETHAN SINGH v. LOHAS SINGH 3 W. R., 184

445. ——— *Suit by purchaser from mortgagor for redemption—Tender of mortgage money*—A purchaser of the right of redemption of a mortgage may sue without tender out of Court of the mortgage-debt to the mortgagee. The tender of the money out of Court only affects the purchaser's right to recover his estate. **DISOVATHI BHOOTAL v. WOMACHURN ROY** 3 W. R., 128

446. ——— *Tender of payment—By bit-wafas—Foreclosure—Beng. Reg.*

MORTGAGE—continued.**8. REDEMPTION—continued**

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 the expiration of the time which the instrument fixes as the period of redemption of payment, and on the expiration of which the conditional sale will become absolute, for this indiscriminating ground of decision would include alike adverse occupations and those which had not the semblance even of such a character, and would establish a bar arising from simple occupation, and not from the laches of the demandant or of others before him. When a mortgagee not only seeks the assistance of a Court to give him possession of his pledge, but also to foreclose the mortgage, he must effect that object in the mode prescribed by s. 14, Regulation III of 1893; s. 3.

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S. C. PRANVATH ROY CHOWDRE v. ROOZBA BEGUM 7 Moore's I. A., 323

447. ——— *Payment into Court of redemption money—Costs*—It is sufficient to bar a foreclosure suit that the principal money and interest due on the mortgage have been paid into Court within the year of grace or an extended time agreed upon by the parties without costs incurred by the mortgagor in the matter of the mortgage.
ZALEM ROY v. DEB SHANEE

[Marah., 107; 1 Hay, 373]

448. ——— *Beng. Reg.*

made on the mortgage, whether such payment was made in cash or realized by the mortgagee from the usufruct of the estate. **ISHAN CHUNDER BANERJEE v. JAGOO CHUNDER DOSS** 13 W. R., 44

449. ——— *Payment by order of Judge into Collector's treasury*—The payment by order of the Judge into the Collector's treasury, before the expiration of the year of grace, of a debt due to a mortgagee, was held to be a deposit

MORTGAGE—continued.**8. REDEMPTION—continued.**

expired, to redeem the property. *Vadju v. Vadju*, I. L. R., 5 Bom., 22, referred to. *RAGHUBAR DAYAL v. BUDHU LAL*. I. L. R., 8 All., 95

430. ————— *Mortgage for a term—Intention of parties.*—When the continuance of the enjoyment of property mortgaged for a prescribed period forms a material part of the contract, the mortgagee cannot be deprived of his right to enjoyment on the mere ground that the contract is one of mortgage. The creation of a term is not conclusive evidence that redemption should not take place before the end of the term. But where there was no agreement for payment of interest at an annual rate, but a lump sum equal to the principal was to be accepted as interest for the term, and a small balance of rent was to be paid at the end of the term when the land was returned, and, taking the net annual usufruct at a fixed sum, a term of years was created, during which the debt and interest were to be liquidated by that usufruct, the risk of seasons and payment of quit-rent falling on the mortgagee,—*Held* that the basis of the contract was the enjoyment of the property by the mortgagee for the term fixed. *SETTUCHERLA RAMANADHIA RAJU BAHADUR v. VAMICHERLA SURIANARAYANA RAJU BAHADUR* [I. L. R., 2 Mad., 314]

431. ————— *Dekkan Agriculturists' Relief Act, XVII of 1879.*—The rule of law that the right to redeem is co-extensive with the right to foreclosure, and is consequently postponed until the time fixed for the payment of the mortgage-debt, does not apply to cases falling under the Dekkan Agriculturists' Relief Act. *BABAJI v. VIKRU* [I. L. R., 6 Bom., 734]

432. ————— *Suit for redemption—Question of title.*—In a suit for redemption the mortgagee cannot dispute the mortgagor's title to the land comprised in the mortgage, on the ground that a claim to it is asserted by other proprietors. *MAHOMED ABDOL RUZZAK v. SADIK ALI* 3 Agra, 142

433. ————— *Dekkan Agriculturists' Relief Act (XVII of 1879), ss. 15 (b) and 20—Instalment decree—Mortgagee in possession under the decree for a specified time—Right to redeem before the specified time.*—Where under a decree passed in a redemption suit brought under the provisions of the Dekkan Agriculturists' Relief Act (XVII of 1879) a mortgagee is continued in possession of the mortgaged property for a definite time, he is entitled to retain possession until the expiration of the specified period, and is not liable to be redeemed before then at the wish of the mortgagor. *RAMCHANDRA RAGHUNATH KULKARNI v. KONDAJI*. I. L. R., 22 Bom., 221

(d) MODE OF REDEMPTION AND LIABILITY TO FORECLOSURE.

434. ————— *Payment of mortgage-debt—Tender or deposit of debt—Beng. Reg. XVII of 1806, s. 7.*—Under s. 7, Regulation XVII of 1806, if a mortgagee has obtained possession at any time

MORTGAGE—continued.**8. REDEMPTION—continued.**

before a final foreclosure of the mortgage, the mortgagor's payment or tender of the principal sum due under the mortgage-debt saves his equity of redemption. *Held* that the section applies where the mortgagee has obtained a decree for possession and wasilat, whether he executes it or not. *SAKRIMAN DICHOT v. DHARAM NATH TEWARI* 3 B. L. R., A. C., 141

435. ————— *Tender of portion of mortgage-debt.*—A mortgagor cannot ask for a decree for possession without tendering the whole of the mortgage-debt. *JOY GOBIND ROY alias BHUJRAJ ROY v. BUNDHOO SINGH*. 17 W. R., 342

436. ————— *Tender by one of several mortgagors.*—A tender by one or more of several mortgagors is not such as a mortgagee is bound to accept, unless it is made conjointly by the whole of the mortgagors, or on their behalf and with their consent. *KAMBAKSH SINGH v. RAM LALL DOSS*. 21 W. R., 428

437. ————— *Deposit in Court by mortgagor—Legal tender—Right to mesne profits.*—Where a mortgagor deposits the amount of the mortgage for the express purpose of preventing a foreclosure, he is entitled to wasilat, of which the mere fact of his having put in a petition, which refers to some other suit between him and the mortgagee, but does not prevent the latter from taking out the deposit, cannot deprive him. Where a mortgagor is liable for only a portion of the mortgaged property, but pays in the whole amount to secure himself against his co-sharers, he is entitled to wasilat for the whole. *DABI DUTT SINGH v. GOBIND PERSHAD* [25 W. R., 259]

438. ————— *Time for payment—Year of grace.*—The year of grace counts from the date of issue of notice of application for foreclosure, and not from the date of service of the notice. *GHAZEED-DEEN v. BROOKUN DOBBY* [2 Agra, 301]

439. ————— *Time for payment—Year of grace—Holiday—Beng. Reg. XVII of 1806.*—The year of grace allowed to a mortgagor by Regulation XVII of 1806 to tender or deposit the amount due to the mortgagee includes authorized holidays, the mortgagor not being entitled to the deduction of any holidays which may occur when that year expires. *KUMOLA KANT MYTEE v. NARAINNE DOSSEE*. 9 W. R., 583

440. ————— *Time for payment—Beng. Reg. XVII of 1806, s. 8—Extension of time.*—A Judge has no discretion to extend the time allowed to a mortgagor under s. 8, Regulation XVII of 1806. *MAHOMED GAZEE CHOWDHRY v. ABDOL MAHOMED AMEERODDEEN* [5 W. R., Mis., 31]

441. ————— *Time for payment—Deposit—Tender of mortgage money.*—Where a mortgagee extended the time for payment to the 25th November, and the mortgagor was prevented by the closing of the Court from depositing the mortgage-money in the Judge's Court on that day,—*Held*

MORTGAGE—continued.**8 REDEMPTION—continued.**

was entitled to equitable relief against the entry of the mortgagee on payment of all arrears of rent together with interest upon each instalment and costs, and three months' time was allowed to the mortgagor to make such payment. **SITARAM DANDEKAR v. GANESH GOKHALE** . 6 Bom. A C, 131

480 Interest, Non-payment of—Right of assignee of mortgagee to foreclose
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DHORE MULICK 1 Ind. Jur. N B, 200

481 Default in payment of interest—Action on covenant before principal sum is due—Where, by a proviso in a mortgage, it is agreed that, "in case of default in payment by the mortgagor, the mortgagee may sue for the principal sum as due." Held that, in an action on the covenant contained in the proviso, and on the ground that the mortgagor had defaulted in payment of interest, the mortgagee was entitled to recover the principal sum as due. **to confer judgment in favour of the mortgagee**
 was in the same words as the covenant for repayment in the mortgage.—**Held** that, in an action on the covenant contained in the proviso, and on the ground that the mortgagor had defaulted in payment of interest, the mortgagee was entitled to recover the principal sum as due.

separate branch of the law. It had not been so many successive breaches, and if the defendants had at any time brought into Court the arrears with interest, or had offered to do so the Courts below, although they could not have passed a decree for the money, might have withheld a decree for enforcing the forfeiture. **ANNA R. BHAGWAT**

[7 N. W. 53]

MORTGAGE—continued.**8. REDEMPTION—continued.**

483. Mortgage by conditional sale—Beng. Reg XVII of 1860, s. 7—Redemption.—In the part of the deed where

the principal debt, and interest for the term which had expired. Interest for

Held that, as the mortgagor had not deposited the sum lent, required, according to

clusive under a 8 involving the dismissal of the mortgagor's suit for redemption. **MAHARAJ KHAMRABHAI PRASAD** I L. R. 9 All. 20 [L. R. 13 I. A., 113]

484 Conditional sale—Interest—Mesne profits—Foreclosure—Beng. Reg XVII of 1860, s. 7—A deed of conditional sale, after reciting that the vendor had received the sale-consideration (Rs 100) and had put the vendee in such possession of the property as the vendor himself had, proceeded as follows: "I (vendor) shall not claim mesne profits nor shall the vendee claim interest in case the vendee does not obtain possession he shall recover mesne profits for the period he is out of possession and when, after the expiry of the term fixed, I repay the entire sale-consideration

years and, on the expiry of the term, took possession under Regulation XVII of 1860 to foreclose. The legal representative of the vendor deposited the sale-consideration mentioned in the deed of conditional sale within the year of grace. In a suit

prevent the sale from becoming absolute, inasmuch as to the sale-consideration, the amount of mesne profits for the period the vendor was out of possession of the property. **Held** (FRANKIE J dissenting), on the construction of the deed of conditional sale, that the deposit of the sale-consideration (Rs 100) was sufficient for the redemption of the property. **RAMSHAN SINGH v. KANHA SINGH** . I L. R. 3 All. 663

485 Lease of mortgaged property by mortgagor to mortgagor—Intervention of parties as to mode of payment and default—Remedies of mortgagees under mortgage—On the 16th March 1874 L. gave M a mortgage on certain land for Rs 1,000 for a term of ten years, by which it was provided, *inter alia*, that the mortgagee should

MORTGAGE—continued.

8. REDEMPTION—continued.

in Court entitling the borrower to redeem. **ABDOOL HUE v. MEAH BRAWAR** . . . **W. R., 1864, 184**

450. ———— *Acceptance of payment—Subsequent objection.*—A mortgagee who once takes the mortgage-money as deposited by the mortgagor within time cannot afterwards sue for possession, on the ground that the deposit was made after the expiry of the year of grace, and that he had applied for the money under wrong information from his agent. **KHONDHAR NOWAZZAR HOSSEIN v. WOOSTROONISSA BIKRE** . . . **W. R., 240**

451. ———— *Payment into Court of redemption-money—Legal tender.*—The defendant in a foreclosure suit paid into Court the amount due in respect of principal and interest of the mortgage. This payment was made after the day on which, according to the mortgage, the sale was to become absolute, but within a few days of the expiration of the year of grace. The payment into Court was accompanied by a petition praying that the fund might be retained in Court, until the decision of certain objections made by the defendant, disputing the amount due under the mortgage-money. *Held* that such payment into Court was not a tender of the mortgage-money, and that the mortgagee was entitled to foreclosure. **NUNUNGO MOONJURREE DABEA v. GOLUCKMONEE DABEA** . **Marsh., 45:1 Hay, 78**

S. C. GOLUCKMONEE DABEA v. NUNUNGO MOONJURREE DABEA . . . **W. R., F. B., 14**

452. ———— *Beng. Reg. XVII of 1806—Stipulated period—Notice.*—In a suit by a mortgagee for possession after foreclosure proceedings under Regulation XVII of 1806, on the ground that the mortgagor had failed to pay the money within one year from the notice, the defence was that the notice had been issued before the lapse of the time stipulated for repayment. The period stipulated for the payment of the principal sum was 3rd July 1866; but the deed contained a proviso that, if the mortgagor paid the interest every half-year during the continuance of the security, the mortgagee would not enforce his security until the 3rd January 1871. *Held* that the time for redemption expired with the period stipulated for the payment of the principal sum, i.e., the 3rd July 1866. **WOOMA CHURN CHOWDHURY v. BEHAREE LALL MOOKERJEE** [21 W. R., 274]

453. ———— *Beng. Reg. XVII of 1806, ss. 7, 8—Tender of mortgage-money—Unconditional tender.*—Where, in a suit for foreclosure of a mortgage by conditional sale, a notice of foreclosure had been issued under Regulation XVII of 1806, and the mortgagors deposited in Court the money due on the mortgage before the expiry of the year of grace, but at the same time denied the mortgagee's right to receive the money, and threatened them with legal proceedings if they took it from the Court, *Held* that the deposit was not an unconditional tender of the money due on the mortgage; that it was vitiated by the conditions under which it was made; that the mortgagees were not bound to accept a deposit so vitiated; and that therefore it was not

MORTGAGE—continued.

8. REDEMPTION—continued.

valid to prevent foreclosure. **Prannath Roy Chowdhury v. Ram Rutton Rao**, 7 Moore's I. A., 323, and **Abdoor Rahman v. Kisto Lall Ghose**, B. L. R., Sup. Vol., 698, followed. **MAKHAN KUAR v. JASODA KUAR** . . . **I. L. R., 8 All., 399**

454. ———— *Mortgage prior to Beng. Reg. XVII of 1806—Beng. Reg. I of 1798.*—When the time fixed for payment of a mortgage, in the nature of a byc-bil-wafa, was the end of 1802, and there was no allegation of tender or deposit of the money prior to that date, *Held* that the mortgagor had, under Regulation I of 1798, lost his right of redemption, and that the benefit of Regulation XVII of 1806 could not be applied to mortgages made prior to the passing of that enactment. **RAHMUN v. SHUMSOODDEEN HYDER**

[W. R., 1864, 183]

455. ———— *Deed without provision for interest—Payment only of principal money.*—When a deed of mortgage is silent as to interest, payment of the bare principal within the year of grace is sufficient to bar foreclosure. **RADHANATH SEIN v. BUNGO CHUNDER SEIN**

[W. R., 1864, 157]

456. ———— *Payment of interest—Interest exceeding principal.*—*Held* that the deposit of the principal due, and a sum equal to the principal by way of interest, was sufficient under the law applicable to the case, and that no sum could legally accrue due as interest during the year of grace, as the law prohibited the recovery of interest beyond the principal. **SHEOBHUTS v. DHAREE THAKOOR** . . . **2 Agra, Pt. II, 194**

457. ———— *Mortgage not providing for interest—Usufruct—Payment only of principal money.*—In an usufructuary mortgage, where there is no stipulation for interest, the mortgagee is not entitled to it, the usufruct going in lieu of interest, and the payment of only the principal sum is a bar to foreclosure. **GUNGA PERSHAD ROY v. ENAYET ZAHEDA** . . . **16 W. R., 251**

458. ———— *Payment within a year—Reg. XVII of 1806, s. 7—Interest.*—Where interest is not reserved by the mortgage-deed, but it provides for repayment of the principal only, a payment into Court within a year after the institution of a foreclosure suit of the principal only without interest satisfies the 7th section of Regulation XVII of 1806, and entitles the mortgagor to the redemption of the property. **ROOPNARAIN SINGH v. MADHO SINGH** . . . **Marsh., 617**

459. ———— *Mortgage with condition that mortgagor should remain in possession until default in payment of interest—Relief from forfeiture.*—The defendant mortgaged certain premises to the plaintiff by a deed of mortgage, which contained a condition that the mortgagor should remain in possession so long as the interest was regularly paid. Default in payment of the interest was made, and the mortgagee sued for possession of the mortgaged premises. *Held* that the mortgagor

MORTGAGE—continued.**8 REDEMPTION—continued**

mortgagee waived the provisions for securing and recovering the interest, and that the transaction must be looked at as simply one of a loan for the specified period at the agreed rate, i.e., 11 per cent per annum. **GANGA SAHAI v LACHMAN SINGH**

[I. L. R., 8 All., 194]

468. — *Interest—Suit for redemption—Transfer of Property Act, s 84*—In February 1883 a decree for pre-emption was obtained in respect of a mortgage by conditional sale executed in August 1842. On the 23rd August 1883 the decree holder executed his decree by depositing the principal amount of the mortgage money and obtained possession of the property in substitution for the original mortgagee. In June 1884 the mortgagor,

The deposit remained in Court, and on the 21st August 1884 the mortgagor deposited a further sum on account of interest but this also the pre-emptor

claim any interest on the mortgage-money for the period antecedent to the 23rd August 1883. *Semle*—That the proper person entitled to receive the interest for that period was the original conditional vendee, and the Court which passed the decree for pre-emption could have allowed him the amount of such

defendant after the 21st August 1884 when the plaintiff, to his knowledge, deposited the whole money due on the mortgage. **DEO DAT v RAM AUTAR**

[I. L. R., 8 All., 503]

from the date of execution of the deed, and that, in default of such payment, the conditional sale should become absolute. It contained the following condition as to interest: "As to interest it has been agreed that the mortgagee has no claim to interest and the mortgagor has none to profits." The mortgage, however, did not obtain possession. In 1878 the mortgaged property was purchased by the appellant at a sale in execution of decree. In 1884 the

MORTGAGE—continued.**8 REDEMPTION—continued**

mortgagee brought a suit for foreclosure against the purchaser and the heirs of the mortgagor, claiming the principal money with interest at 8 annas per cent.

of interest in consequence of the failure to get possession under the contract, he had none enforceable in this respect against the land, which had passed free from charge for interest to the purchaser. **Rameshwar Singh v Kanahia Sahu, I L R 3 All., 653, referred to ALLAH BAKISH v SADA SETH**

[I. L. R., 8 All., 182]

470. — *Usufructuary mortgage—Covenant by the mortgagor to pay the mortgagee arrears of rent due at the time of redemption—Payment by mortgagee of arrears of revenue—Right of mortgagee to reimbursement before redemption*—On the 27th August 1883 A and B jointly executed two usufructuary mortgages for the sums of Rs. 3,000 and 500 respectively in favour of the defendants. On the 24th March 1886 the mortgagors executed another usufructuary mortgage in favour of the plaintiffs for Rs. 15,000, entitling them to

only, composed of certain arrears of rent and an item of arrears of Government revenue paid by the defendants, was due to them and decreed redemption of the property on condition of payment of the aforesaid sum. Both the parties appealed. *Held* that the items of arrears of rent were recoverable under the covenant contained in that behalf in the

from said lot at this rate. *S 72 of the Transfer of Property Act only reproduces the rules of law which Courts of Justice in India have uniformly adopted.* **GIRDHAR LAL v BHOLA NATH**

[I. L. R., 10 All., 611]

471. — *Redemption claimed under terms of mortgage—Insufficient*

redemption at the close of the second year, on showing only the whole of the principal and interest was not entitled to a decree for redemption, in a suit brought after the close of the second year, on showing only

MORTGAGE—continued.**8. REDEMPTION—continued.**

take the profits of the land in lieu of interest; that the mortgagee should grant a lease of the land to the mortgagor, the latter paying the former the profits of the land every harvest in lieu of interest; that if the mortgagor failed to pay the mortgagee the profits of the land by the end of any year, he should pay interest on the principal amount of the mortgage at the rate of one per cent. calculated from the date of the mortgage, and in such case the mortgagee should have no claim to the profits; and that, if the mortgagor failed to pay the mortgagee the profits by the end of any year, the mortgagee should be at liberty to cancel the lease and to enter on the land, and collect the rents thereof and apply the same to payment of interest. On the 21st March 1874 *M* gave *L* a lease of the land, under which Rs. 1,980 was the sum agreed to be payable annually as profits in lieu of interest. In 1879 *M*, who had not been paid any profits, sought to enforce in the Revenue Courts the condition as to entry on the land, but was successfully resisted by *L*'s widow. On the 16th January 1880 *M* sued *L*'s widow for interest on the principal amount of the mortgage at the rate of one per cent. calculated from the date of the mortgage to the date of suit, claiming the same by virtue of the provisions of the mortgage, on the ground that he had not been paid any profits. *Held* that the mortgage and lease transactions must be regarded as one and indivisible, and the questions at issue between the parties be dealt with *quâ* mortgagor and mortgagee; that so regarding such transactions and dealing with such questions, *M* and *L* did not stand in the position of "landlord" and "tenant" and the proceedings of 1879 in the Revenue Courts were had without jurisdiction; also that, although looking at the terms of the contract of mortgage it was the intention of the parties that, on the mortgagor failing to pay the mortgagee the profits by the end of any year, the latter should in the first place seek possession of the land, yet as *M* had never obtained possession, but on the contrary had been resisted when he sought to obtain it, his present claim for interest was maintainable. The Court directed that so much of the interest as was due at *L*'s death should be recoverable from such property of his as had come into his widow's hands; and as to the rest, which related to the period during which the widow had been in possession and in receipt of the profits, that it should be recoverable from her personally. *BHAGHELIN v. MATHURA PRASAD* **I. L. R., 4 All., 430**

466. ————— *Usufructuary mortgage—Interest, Payment of—Beng. Reg. XXXIV of 1803, ss. 9, 10—Act XXVIII of 1855—Act XIV of 1870—Transfer of Property Act, IV of 1882, ss. 2, 62.*—A deed of usufructuary mortgage executed in 1846, under which the mortgagee had obtained possession, contained the following conditions: "Until the mortgage-money is paid, the mortgagee shall remain in possession of the mortgaged land, and what profits may remain after paying the Government revenue are allowed to the mortgagee, and shall not be deducted at the time of redemption. At the end of any year, the mortgagors

MORTGAGE—continued.**8. REDEMPTION—continued.**

may pay the mortgage-money and redeem the property. Until they pay the mortgage-money, neither they nor their heirs shall have any right in the property." In 1884 a representative in title of one of the original mortgagors sued to redeem his share of the mortgaged property, upon the allegation that the principal amount and interest due upon the mortgage had been satisfied from the profits, and that he was entitled to a balance of Rs. 45. It was found that from the profits, after deducting Government revenue, the principal money with interest at the rate of 12 per cent. per annum had been realized, and that the surplus claimed by the plaintiff was due to him. The lower Appellate Court dismissed the suit, on the ground that under s. 62 (b) of the Transfer of Property Act (IV of 1882), and with reference to the terms of the deed of mortgage, the plaintiff was not entitled to recover the property until he paid the mortgage-money. *Held* that, although the word "interest" was not specifically used, the natural and reasonable construction of the deed was that it was arranged that the mortgagee should have possession of the property and enjoy the profits thereof, until the principal sum was paid, in lieu of interest. *Held* that the provisions of ss. 9 and 10 of Regulation XXXIV of 1803, which was in force when the deed of mortgage was executed, were not affected or abrogated by Act XXVIII of 1855 or Act XIV of 1870 or Act IV of 1882; that these provisions were incidents attached to the mortgagor's rights of which he was entitled to have the benefit; and that the contract of mortgage being subject to these provisions, the charge would have been redeemed as soon as the principal mortgage-money with 12 per cent. interest had been realized by the mortgagee from the profits of the property. *SAMAR ALI v. KARIM-UL-LAH* **I. L. R., 8 All., 402**

467. ————— *Usufructuary mortgage—Interest—Waiver.*—By a deed of usufructuary mortgage dated in 1875, a sum of Rs. 30,000, with interest at Rs. 1 per cent. per mensem, was advanced on the security of certain property, for a period of ten years. The deed contained various provisions for securing the payment of interest to the mortgagee, and among these a provision that he should have possession of the property and take the profits on account of interest, the profits being fixed at a certain amount yearly, leaving an agreed balance of interest to be paid yearly in cash. There was also a provision that in the event of possession not being given, the mortgagee might treat the principal money as immediately due, and recover it at once with interest at the rate of Rs. 1-6 per cent. per mensem. The mortgagee did not take possession of the mortgaged property, and took no steps to obtain such possession, or to recover the money for nine years, during which no interest was paid. In November 1884 the mortgagee brought a suit against the mortgagors to recover the mortgage-money, claiming interest from the date of the mortgage-deed to the date of the suit at Rs. 1-6 per cent. per mensem. *Held* that the fair inference of fact from the circumstances above described was that the

MORTGAGE—continued.**8. REDEMPTION—concluded.**

p 237, distinguished. *Deshpande* I. L. R., 16 Bom., 659

TANI BAGAYAN v. HARI

[I. L. R., 16 Bom., 659 note

477. ———— *Transfer of Property Act (IV of 1882), s. 93—Redemption decree—Time for and manner of redemption—In a* *kanom* or usufructuary mortgage brought

by the defendant should surrender the mortgage premises to him. Against this decree an appeal was filed objecting both to the direction for surrender of the mortgage premises and also to the sum fixed as the

mortgage premises were surrendered to the defendant by the mortgagee against this order,—

under that section. *KANARA KURUP v. GOVINDA KURUP* I. L. R., 16 Mad., 214

478. ———— *Decree for foreclosure giving future interest, effect of, as charging mortgaged property—Transfer of Property Act (IV of 1882), s. 86—Civil Procedure*

such future interest, supposing it could be properly awarded, concerning which no opinion was expressed, could not be treated as a charge upon the land; but the judgment-debtor was entitled to resist foreclosure on payment within the prescribed period of the mortgage-money and interest up to date of decree, the decree-holder being at liberty to recover the future interest only from the judgment-debtor personally.

BHAWANI PRASAD v. BHAI LAL [I. L. R., 16 All., 289

See *RAJ KUMAR v. BISHWESHAR NATH* [I. L. R., 16 All., 370

MORTGAGE—continued.**9. FORECLOSURE.****(a) RIGHT OF FORECLOSURE.**

479. ———— *Right in mortgage by conditional sale.—A mortgage under an instrument*

480. ———— *Forfeiture of priority.—The power of foreclosure is incidental to a mortgage in the form of a conditional sale, and the mortgagees by availing themselves of that power do not forfeit the priority they possess.* *BHISROOZE MISHRA v. OOLPAT ALI* 2 N. W., 311

proceedings taken under Regulation XI of 1803. *GOORDIAL v. HENSCHONWES* 2 Agra, 173

RUGHONATH DASS v. RAM GOPAL 5 N. W., 29

482. ———— *Title of purchaser by conditional sale.—The right of a pur-*

MOHAMMAD ALI

property vests absolutely in the mortgagee, even though he may not have obtained a decree establishing or declaring his right. *AAOUB CHAND v. LEEIA*

484. ———— *Right at expiration of year of grace—Suit to confirm title.—The title of a mortgagee is not complete up to the expiry of the year of grace all well by the regulation but it is necessary for him to bring a regular suit and obtain a decree in order to confirm his title.* *MASTOODIN CHOWDHURY v. KHODA NEWAZ CHOWDHURY* [12 C. L. R., 479

485. ———— *Agreement to pay amount to co-sharer or in default to forfeit share.—Where certain arbitrators, summoned by the revenue authorities under the Regulations, investigated ancestral debts, and ascertained the amounts to be contributed by the other co-sharers to one who paid the revenue, and they, accepting the award, promised to pay principal and interest on a certain date; and also further agreed that, if they failed to pay on the specified day, their shares should thenceforward*

MORTGAGE—continued.**8. REDEMPTION—continued.**

that in the first half of the second year the principal money had been deposited in Court, and that for the interest, for both years, decrees had been obtained by the mortgagee against him, before his suit was instituted. The above not showing payment or tender of the interest, of which payment was secured by the mortgage, an appeal was dismissed. **HEWANCHAL SINGH v. JAWAHIR SINGH** I. L. R., 18 Cal., 307

472. ————— *Decree for redemption without proviso for foreclosure or payment within a fixed time—Effect of not executing decree for redemption—Limitation.*—A decree for redemption which does not provide for payment of the mortgage-debt, within a fixed time, or for foreclosure in case of default, operates of itself as a foreclosure decree, if not executed within three years. On 12th November 1888 A obtained a decree for redemption on payment of a certain sum of money to B (the mortgagee). The decree contained no direction as to foreclosure, or as to the time within which the payment was to be made. On 26th November 1881, B, the mortgagee, sued to recover the mortgage-debt by sale of the property mortgaged. On 5th April 1885 A paid into Court the sum directed to be paid by the redemption decree. B refused to accept the payment, and insisted upon his right of sale. *Held* that no time having been fixed by the decree for redemption, A had three years within which to execute the decree; and as he had paid the money within the three years, A was entitled to recover the property. *Held* also that the decree for redemption would, if not executed within three years, operate as a foreclosure decree, and therefore effectually determine the rights under the mortgage both of the mortgagee and the mortgagor. **MALOJI v. SAQAJI** I. L. R., 13 Bom., 587

473. ————— *Decree for redemption—Absence of clause as to time of payment or foreclosure—Execution of the decree after three years—Darkhasts presented from time to time—Limitation Act (XV of 1877), art. 179.*—Where a redemption decree contained no clause as to the time for payment of the mortgage-debt, or foreclosure in default of payment, *Held* that the mortgagor could still, after the expiration of three years from the date of the decree, execute it by paying the mortgage-money, having regard to various darkhasts presented by him from time to time, provided the darkhasts complied with the conditions of the Limitation Act (XV of 1877). *Dicta* to the contrary in **Gan Sarant Bal Sarant v. Narayan Dhond Sarant**, I. L. R., 7 Bom., 467, and **Maloji v. Saqaji**, I. L. R., 13 Bom., 587, disapproved of. **NARAYAN GOVIND v. ANANDRAM KOTHRAM** I. L. R., 16 Bom., 480

474. ————— *Decree directing payment of mortgagee's costs on a certain date, or, in default, foreclosure—Effect of such default—Enlargement of the time fixed for redemption.*—In a redemption suit the Court of first instance found that the mortgage-debt had already been paid off out of the rents of the mortgaged property, and it accordingly awarded possession to the plaintiff,

MORTGAGE—continued.**8. REDEMPTION—continued.**

directing that each party should bear his own costs. In execution of this decree, the mortgagor took possession of the property in dispute. On appeal by the mortgagee, the District Court amended the decree by directing the mortgagor to pay the mortgagee's costs of the suit by a certain day; or, in default, to stand for ever foreclosed. The mortgagor failed to pay the costs as directed. Thereupon the mortgagee applied, in execution, to have the property restored to his possession. The Subordinate Judge granted this application. The District Judge, in appeal, held that the decree did not provide for delivery of the property by the mortgagor to the mortgagee. He, however, directed the mortgagor to pay the mortgagee's costs with interest. On appeal to the High Court, *Held* that, as the mortgagee's costs, which became a part of the mortgage-debt, were not paid on the due date, the mortgagor was finally foreclosed, and the property thereupon passed to the mortgagee. It was therefore not competent to the Court, in execution, to practically enlarge the time for redemption, by allowing the mortgagor further time to pay the mortgagee's costs. **SUBHANA v. KRISHNA** I. L. R., 15 Bom., 644

475. ————— *Decree for redemption—Absence of clause for foreclosure on non-payment in three months—Default in payment in time allowed.*—In a suit for redemption the mortgagors obtained a decree on 1st March 1886, whereby they were directed to pay the mortgagee the sum of Rs 419 within three months, whereupon they were to get possession of the mortgaged property. The decree contained no clause for foreclosure in the event of non-payment. On 19th April the mortgagees appealed to the High Court against the decree. On 12th October 1886 the mortgagor paid the Rs 419 into Court and applied for execution of the decree, which, though the three months had expired, the Court allowed holding that it had power to enlarge the time for execution: this order was set aside on appeal, the High Court holding that there was no power in the Court executing a decree to enlarge the time for execution. On 15th July 1890 the mortgagee was allowed to withdraw his appeal, and the mortgagor's application to be allowed to execute the decree was rejected, the Court holding that the time could not be computed from the withdrawal of the appeal, but that it ran from the date of the original decree. *Quære*—Whether, there being no foreclosure clause in the decree, the mortgagor could file another suit to redeem. **CHUDASAMA MANABHAI MADAR-BANSO v. ISHWARGAR BUDHAGAR**

[I. L. R., 16 Bom., 243]

476. ————— *Decree for redemption on payment of a certain amount, and in default, mortgagee to recover possession—Suit for an account by mortgagor—Right of suit.*—A mortgagee having obtained possession of mortgaged property under a decree, which directed the mortgagor to redeem on payment of a certain amount, and in default the mortgagee to recover and retain possession until payment, *Held* that a subsequent suit

MORTGAGE—continued.**9. FORECLOSURE—continued.**

he entitled to foreclose at an earlier period. *Sarasbala Devi v. Nand Lal Sen*, 5 B. L. R., 359, and *Imdad Hussain v. Monnu Lal*, I. L. R., 3 All., 509, referred to. *KUTRA BIBI v. WAJID KHAN*

[I. L. R., 16 All., 59]

to the mortgage. The deed also contained a covenant that, upon any default in payment of the interest half yearly, the whole principal and interest should become due. Upon such default made the mortgagee filed his petition, under s. 8, for foreclosure, before

missing what was to be repaid as the "provisional period" which remained as stated in the proviso. Thus the petition had been prematurely filed. The 8th section of the Regulation had not been called into operation, and the right to redeem remained. *Sarasbala Devi v. Nand Lal Sen*, 5 B. L. R., 359, 13 W. R., 354, and *Norma Churn Chowdhry v. Beharee Lal Mookherjee*, 21 W. R., 274, referred to and approved. *KISHORI MOHUN ROY v. GANGA BANU DEBI* I. L. R., 23 Cal., 228 [L. R., 23 I. A., 183]

493. — Rights of mortgagee—
Clause for recovery of mortgage-money before expiry of term.—*M*, a Hindu widow, executed a deed of usufructuary mortgage in *J*'s favour the property hypothecated being the separate property of her husband in which she had only a life-interest. On *J* applying for mutation of names, *B* objected that he was in proprietary possession under a deed of gift executed by *M*, and the objection was allowed. In virtue of a clause in the deed of mortgage, that

recover the money by the sale of the hypothecated

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property *B*, in addition to an objection to the validity of the mortgage based on the deed of gift, pleaded that it was invalid as against him, the next

on reference to that ruling, there was any such danger or weakness in *J*'s title so as to entitle him to enforce the mortgage-debt before the expiry of the term. *BULAKI SINGH v. JAI KISHEN DAS*

[7 N. W., 200]

494. — Extension of term of grace after notice of foreclosure.—A mortgage, under a conditional sale, caused notice of fore

[1 N. W., 1d. 1873, 8]

495. — Agreement between mortgagor and mortgagee—
Release by mortgagor—Right of mortgagee to fall back on mortgage rights.—The mortgagee of certain shares of certain villages applied for foreclosure under Regulation XVII of 1866. While the year of grace was running and shortly before its expiration the mortgagor and the mortgagee came to a compromise on the matter of the mortgage. It was agreed by the mortgagor to transfer by sale to the mortgagee the shares of three of the villages in lieu of the mortgage-money, and that he should not assert his right under s. 7 of Act XVIII of 1873, as a proprietor, to retain the said lands apart from, to such shares. The mortgagee agreed to relinquish his claim in the

XVIII of 1873 to the said lands appertaining to the shares transferred to the mortgagee. Thereupon the mortgagee sued the mortgagor for possession of the shares by virtue of the foreclosure proceedings. *Held*, following *Lal Bahar Roy v. Gungput Roy*, 1 B. L. R., 1d. 1873, 81 that on the failure of the mortgagor to give effect to the compromise transaction the mortgagee was entitled to fall back on his right under his mortgage and the foreclosure proceedings taken thereunder. *DHOODHA RAI v. MEDHO RAI*

[I. L. R., 4 All., 30]

496. — Compromise

MORTGAGE—continued.**9. FORECLOSURE—continued.**

become his absolute property, ~ *Held* that such an agreement amounted to a conditional sale, and was liable to the incidents which under the Regulations attach to such sales, and the suit for possession, without summary process of foreclosure, was not maintainable. *GURDAS LALL v. GAND LALL*

[3 Agra, 184

480. — *Beng. Reg. XXIV of 1802—Mahomedan mortgage.*—In 1832 a Mahomedan mortgaged certain land with possession on condition that, if the money lent was not repaid within eight years, the land should be enjoyed by the mortgagee after that period as if conveyed by sale. In 1853 a suit was brought to redeem. *Held* that the title of the mortgage became absolute by virtue of the terms of the contract on default of payment within the time specified. The obligation cast by Regulation XXXIV of 1802 upon a mortgagee to account for profits does not prevent a mortgage by way of conditional sale from becoming, after the period for redemption has elapsed, an absolute sale where no account has been rendered by the mortgagee. The rule laid down in *Pottahkaramer's case*, 13 *Moore's J. A.* 560, applies to a mortgage executed by a Mahomedan. *MALIKARJUNUDU v. MALIKARJUNUDU*

[I. L. R., 8 Mad., 185

487. — *Parol conditional mortgage—Beng. Reg. XVII of 1806.*—K made over to G. from whom he had borrowed certain moneys, certain land, on the oral condition that, if such moneys were not repaid within two or three months, such land should become G's absolutely. *Held* that, as there was no deed of conditional mortgage, the provisions of Regulation XVII of 1806 were not applicable to G, and he became the owner of such land after the expiry of three months from the date on which it was made over to him, in consequence of the amount of the loan not having been repaid to him. *GOBAN DHAN DAS v. GOKAL DAS*

[I. L. R., 2 All., 633

488. — *Mortgage in English form.*—A mortgage in the English form between Hindus of lands in the mofussil, outside Calcutta, has always been treated by the Courts as a mortgage by conditional sale. *SHRINOVAT DASI v. SRINATH DAS*

I. L. R., 12 Cal., 614

489. — *Beng. Reg. XVII of 1806, s. 7—Foreclosure of equity of redemption—"Stipulated period."*—By a mortgage in the English form, the defendants conveyed certain property to the plaintiff, subject to the proviso that, in the event of the defendants paying to the plaintiff the principal sum on the 4th September 1868, and in the meantime paying interest on that sum half-yearly, with annual rests, in case of default of such payment, then the plaintiff should re-convey the property. The defendants failed to pay interest; and on the 4th December 1866 the plaintiff applied to the Judge of Chittagong for foreclosure: thereupon notice, under s. 8 of Regulation XVII of 1806, was issued, and served on the defendants. On the 15th April 1868 this suit was instituted by the plaintiff for

MORTGAGE—continued.**9. FORECLOSURE—continued.**

the establishment and confirmation of absolute purchase, and to obtain possession of the mortgaged premises. *Held* that the suit was not maintainable. Regulation XVII of 1806 applied to this mortgage; and, under that Regulation, the mortgagee could not apply for foreclosure until the time agreed upon for repayment by the mortgagor,—that is, the "stipulated period" referred to in s. 7;—and the mortgagor was entitled to one year's grace from notification of the application for foreclosure made after that date. *SARASIBALA DEBI v. NAND LALL SEN*

[5 B. L. R., 389

S. C. SCHOROSHEE BALA DABEE v. NUND LALL SEN
[13 W. R., 364

490. — *Beng. Reg. XVII of 1806, s. 8—Conditional sale.*—An instrument of conditional sale provided that the conditional vendor should retain possession of the property to which it related, paying interest on the principal sum lent annually at twelve per cent., and should repay the principal sum lent within seven years; that (by the fourth clause thereof), in the event of default of payment of interest in any year, the term of seven years should be cancelled, and the conditional sale should at once become absolute; and that (by the fifth clause thereof) in the event of the principal sum lent not being repaid at the end of seven years, the conditional sale should become absolute. Default having been made in the payment of interest annually as stipulated, the conditional vendee, the term of seven years not having expired, took proceedings to foreclose, in pursuance of the condition contained in the fourth clause of the deed, and the conditional sale was declared absolute. The conditional vendee then sued for possession of the property. *Held* that the fifth clause of the deed did not dispense with the necessity of complying with the provisions of s. 8 of Regulation XVII of 1806 and was compatible with them, and on or after the expiry of the stipulated period application for the foreclosure of the mortgage and rendering the conditional sale absolute in the manner prescribed by that Regulation might and must be made; that the condition contained in the fourth clause of the deed in effect defeated and violated the provisions of that Regulation, and summarily converted a conditional into an absolute sale in disregard and defiance thereof, and the foreclosure proceedings taken by the conditional vendee before the expiry of the period stipulated for the repayment of the principal sum lent were irregular, and the sale could only be rendered conclusive in the manner prescribed by that Regulation in pursuance of the fifth clause of the deed; and that accordingly such suit was not maintainable. *IMDAD HUSAIN v. MANNU LAL*

[I. L. R., 3 All., 509

491. — *Beng. Reg. XVII of 1806, s. 8—Stipulated period—Mortgage by conditional sale.*—The term "stipulated period," as used in s. 8 of Bengal Regulation XVII of 1806, means the full term on the expiry of which the mortgage-money is payable, notwithstanding that under the strict terms of the mortgage the mortgagee might

MORTGAGE—continued**9 FORECLOSURE—continued**

mortgaged as their own, by way of conditional sale, a portion of the joint family property. The mortgagee foreclosed, and then instituted a suit for possession which he withdrew with liberty to bring a

entitled to recover the money lent and interest, and the costs of the second suit. **BRUWAN ACHARJEE v. GOWIND SAHOO**

[I L R., 9 Calo., 234; 11 C L R., 355]

competent for one of them to foreclose in respect of his fractional share. A party suing for possession of a share of mortgaged property (after its release has been effected by an arrangement made between the mortgagee and mortgagor) on the ground that he had an interest in the mortgage and in the funds advanced by the mortgagee, must show that the mortgagor had notice of such interest. **BOORA ROY v. AMRACK ROY**

10 W. R., 476

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and not severally, and the moiety of the debt foreclosed the mortgage as to all, and the different mortgagors for

the suit was

MANNI RAM

I L R., 1 All., 297

FOR

Joint mortgage

sued for possession of that village. Held that the suit was maintainable. **Chandika Singh v. Pikkar Singh, J. L. R., 2 All., 906**, distinguished. **BRUWAN SINGH v. LAIK SINGH** I L R., 5 All., 257

507.

Foreclosure of portion of joint property—Where a mortgage of an estate is a joint one and there is no specification in it that any individual share or portion of a share of such estate is charged with the repayment of any defined portion of the mortgage-money, but the whole estate is made responsible for the mortgage-money, it is not competent for the mortgagee to

MORTGAGE—continued.**9 FORECLOSURE—continued.**

treat a sum paid by one of the mortgagors as made on such mortgagor's own account in respect of what might be calculated as his reasonable share of the joint debt and to release his share from further liability. Where therefore in the case of such a mort-

shares of such estate. Held that the foreclosure proceedings being irregular, the suit was not maintainable. **CHANDIKA SINGH v. PHORAK SINGH**

[I L R., 3 All., 906]

508.

Purchaser of share of mortgaged property—A mortgagee sold part of the mortgaged property and then foreclosed, his purchaser being no party to the foreclosure proceedings. The mortgagee and purchaser afterwards sued for recovery of possession of the mortgaged property after foreclosure. Held that the purchaser could maintain his suit although he had not been a party to the foreclosure proceedings for the recovery of the mortgaged property, which had been purchased by him. The foreclosure conferred an absolute title to the whole property mortgaged on the mortgagee and anybody claiming under him. **RAJ CHANDRA PONDDE v. MAN HANA**

[3 B L R., Ap., 148. 13 W. R., 353]

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A to secure a first mortgage to **B** of the same and certain other property. On the 29th of July 1873 **B** executed with notice to **A** to release the properties mortgaged by the first deed. On the 23rd March 1874 and before the expiration of the year of grace a portion of the properties subject to both mortgages was sold at an auction sale subject to existing incumbrances and **C** became the purchaser. **C** thereupon, to protect the interests he had bought at the sale, purchased in the name of **D**, a trustee, all the interest of **B** in both mortgages and after the expiration of the year of grace, filed in the name of himself and **D** a suit to declare his absolute right to the foreclosed properties and afterwards filed another suit against **A** for a money decree on the bond in the second mortgage. Held that **C**, being owner of portion of the property subject to both mortgages and as such liable to contribute proportionately to the payment of both could not foreclose the first mortgage and then sue **A** for the whole debt due upon the second. **Quære**—Whether it would be equitable for **C** to foreclose the first mortgage? Held further that the bringing of the second suit had the effect of reopening the foreclosure proceedings, and that the Court could now make a decree in the whole case. **KALIRAM SINGH v. KAMINI BOODHRAI CHOWDHURAI**

[I L R., 4 Calo., 475; 3 C L R., 184]

Merger—Fore-

MORTGAGE—continued**9. FORECLOSURE—continued.**

had been accepted and that the rest of the debt would be paid with interest on the date of the expiry of the year of grace, failing which the sale should become absolute. *Held* that it was not the intention of the parties to substitute a new contract for the one under which the notice of foreclosure issued or that the proceedings should be allowed to drop. **GOONOMOYEE DASSIA v. PARBHUTTY DASSIA** . . . 10 W. R., 328

407.

Usufuctuary mortgage—Position of mortgagee in possession.—Where, in proceedings held before the issue of Circular Order of 2nd July 1813, a mortgagor had the opportunity in a Court competent to decide the matter, to contest, as against the mortgagee, all questions of fact necessary to give good and absolute title to the mortgagee, and, though called upon, did not show that the mortgage was valid one, but admitted that the mortgagee's were not paid off, and that an extension of the year of grace had elapsed without his performing any of the conditions which would have saved the property from being foreclosed, it was held that, even if the proceedings did not possess the character of a regular suit, they were sufficient in themselves to effect a foreclosure, if such was their purpose. Where a party, originally a mortgagee out of possession, has been put into possession by the act and permission of the mortgagor, he has really (inasmuch as a parcel contract is sufficient in this country to pass immovable property) obtained a new title altogether different from that which he possessed before, and having its foundation in the act of the parties themselves when they put him into possession. **RUNJEET NARAIN SINGH v. SHUREEPOONISSA**

[10 W. R., 478]

408.

Agreement for fresh consideration, between mortgagee and third person for release of property from mortgage—Release not required to be in writing and registered.—The mortgage of immovable property under a hypothecation bond entered into in agreement with one who was not a party to his mortgage to release part of the property from liability under his mortgage. This agreement was not in writing and registered. The mortgagee subsequently sought to enforce the hypothecation against the whole of the mortgaged property. *Held* that the agreement, being a new contract for a fresh consideration between persons who were not parties to the mortgage, was not, as between the parties to the mortgage, a release which the law required to be in writing and registered. *Held* also that the party to the agreement with the mortgagee might have come into Court as a plaintiff to enforce the same, and that it was equally competent for him to plead it in avoidance of the mortgagee's claim to bring to sale the property referred to therein. **NASH v. ARMSTRONG**, 30 L. J., C. P., 266, referred to. **GUERDIAL MAL v. JAHHRI MAL** L. L. R., 7 All., 820

409.

Effect of foreclosure—Purchaser from mortgagor.—Foreclosure proceedings in the Supreme Court as to mofussil property, to which a purchaser from the mortgagor is not made a party, cannot affect that purchaser.

MORTGAGE—continued.**9. FORECLOSURE—continued.**

BRAJANATH KUNDU CHOWDREY v. KHILAT CHUNDRA GHOSE . . . 8 B. L. R., 104

[14 Moore's L. A., 144; 16 W. R., P. C., 33]

S. C. in Court below. **KHELUT CHUNDER GHOSE v. TARA CHAND KOONDOL CHOWDREY** . 6 W. R., 289

500.

Foreclosure, Effect of—Ded of conditional sale.—Until foreclosure, the vendee, under a bond of conditional sale, holds the lands, the subject of the bond, only as security for the money lent. *Semble*—The effect of foreclosure is to put an end to the original conditional sale and to make the property *ab initio* the immovable property of the person who advanced the money. **SHAM NARAIN SINGH v. ROGHOOBUR DYAL** [L. L. R., 3 Cal., 508; 1 C. L. R., 343]

501.

Effect of foreclosure—Sale for arrears of revenue—Fraud of mortgagee—Act I of 1815.—The effect of a foreclosure decree in the Supreme Court in a mortgage suit between Hindus is equivalent to a decree establishing proprietary right in the mofussil Courts, in similar suits on the like instruments. The mortgagee in possession and another having sought to deprive the mortgagor of his title to redeem by means of a secret purchase of the mortgaged estate between them, including the fraudulent device of a sale by auction for arrears of revenue, such arrears being designedly incurred by the mortgagee in possession, it was held that a suit for redemption and for possession instituted many years after the sale for arrears was not barred by s. 24 of Act I of 1815. If a mortgagee in possession fraudulently allows the Government revenue to fall into arrears with a view to the land being put up for sale and his buying it in for himself, and he does in fact become the purchaser of it at the Government sale for arrears, such a purchase will not defeat the equity of redemption. **NAZIR ALI KHAN v. OJOODHYARAM KHAN**

[5 W. R., P. C., 83; 10 Moore's L. A., 540]

502.

Usufuctuary mortgage—Profits paying the interest—Suit by mortgagee to recover mortgage-money after time for redemption.—Certain property was mortgaged for a term of years, and possession given to the mortgagee. The mortgagor covenanted in the mortgage-deed that he would redeem the property after the term had expired, and that the mortgagee should take the profits in lieu of interest until redemption. After the expiry of the term, the mortgagee sued to recover the mortgage money. *Held* that the mortgage was security for the repayment of the mortgage-money after the term had expired, and that during the term the mortgagor could not redeem nor could the mortgagee recover his money, but that, when the term had expired, either party could bring the transaction to a close. **GANESH KOOR v. DEEDAR BUKSH** . 5 N. W., 128

DYA RAM v. JWALA NATH . 5 N. W., Ap., 2

503.

Suit for possession—Covenant to pay—Conditional sale—Damages Measure of—Costs.—Two out of several co-sharers

MORTGAGE—continued.**3 FORECLOSURE—continued**

ss 7 and 8.—A mortgagee's "application" for foreclosure, as the term is used in s. 7, Regulation XVII of 1803, means the whole transaction contemplated in s. 8 ending with the notification to the mortgagor and the y—
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[9 W. R., 118]

mortgagor, the purannah to be issued by the mortgagee under s. 8 of Regulation XVII of 1806 must distinctly notify to the mortgagor that if he shall not appear to the mortgagee in the manner

one will become conclusive BUREKH KHAN & BECHUN KHAN
3 N W 35

Omission to give mortgagor copy of application to foreclose.—A mortgagee failing to fulfil one of the two conditions required by Regulation XVII of 1806 s. 8,
"

519—*Service of notice*
—On whom to be served—The only person on whom effectual service of notice of foreclosure can be made is the person really interested in protecting the estate KALEE HOOMAN DUTT & PRAN KISHORE CHOWDHURY
22 W. R., 168

521—*Right to notice*
—Beng Reg XVII of 1806, s. 8—Purchaser of equity of redemption. The purchaser of the equity of redemption is not entitled to notice in a foreclosure suit, especially if the purchase has not been made until after the institution of the suit. GOOROO PERSAUD JANAK & BIFFPOORSAUD BERRAN
[Marsh., 223, 3 Hay, 153]

KURMOFOOL & BISSISSUR SINGH Marsh., 337
S. C. BISSISSUR SINGH & KURMOFOOL
[3 Hay, 408]

See KISHEN BULLCHH MUMTA & BELLASOO COMRA
3 W. R., 230

Where, however, the Judges (BAYLEY and PHILLIPS) differed, the former holding no vice was not necessary

See BISSOVATH SINGH & BROJONATH DASS
[3 W. R., 230]

522.—*Right to notice*
—Purchaser from mortgagor—A purchaser from a

MORTGAGE—continued**3 FORECLOSURE—continued.**

mortgagor, as one of his legal representatives, is entitled to notice of foreclosure. MADHUN THAKOOR & JHOOTUCK LALL DASS
12 W. R., 105

MITTERJEET SINGH & MOOKH LALL SINGH
[35 W. R., 139]

523.—*Right to notice*
—Purchaser from mortgagor—Legal representative—Beng Reg XVII of 1806, s. 8—The purchaser from a mortgagor is his legal representative; and when the mortgagee takes out foreclosure proceedings, the notice enjoined by s. 8 Regulation XVII of 1806 must be served on such purchaser if it is used after the sale; fresh notice to the purchaser would not be necessary if the sale took place after notice to the mortgagor. ACHUNDIR MISHRA & LALLA NUND RAM
11 W. R., 544

524.—*Right to notice*
—Transferee in possession—Transferee in possession are entitled to notice of foreclosure. TAZI & BUREKH & SHIB CHUNDER DHIA
18 W. R., 170

525—*Assignee of mortgagor*—Beng Reg XVII of 1806, s. 8—Legal representative—A purchaser of the rights and interests of the mortgagor is a legal representative within s. 8 Regulation XVII of 1803, and notice of application for foreclosure must be served on him. GOLLA DEBAGIR KHAN & JAGAT SINGH
[1 R. L. R., S. N., 3:10 W. R., 88]

526—*Right to notice*
—Beng Reg XVII of 1806 s. 8—Conditional sale—Purchaser—Second mortgagee—Legal representative—Where land which has been conditionally sold is subsequently assigned to the second mortgagee, being the mortgagor's legal representative within the meaning of that term in s. 8 of Regulation XVII of 1803, is entitled to foreclosure proceedings being taken by the conditional vendee to the notice required by that act or and cannot be deprived by the conditional vendee of the possession of the land notwithstanding foreclosure where no such notice has been given to him. DIBBOJ SINGH & DEBI SINGH
1 R. L. R., 1 All., 403

527.—*Right to notice*
—"Legal representative" of mortgagor Beng Reg XVII of 1806 s. 8—The holder of a decree for money does not merely because he has attached land belonging to his judgment-debtor while it is subject to foreclosure proceedings, become a legal representative of the mortgagor and entitled to notice of foreclosure proceedings. RADHEY TEWARI & BIRJA MISHRA
[1 R. L. R., 3 All., 413]

528.—*Right to notice*
—Purchaser of mortgagor's interest—Where a person mortgages his property by deed of conditional sale and afterwards the right, title, and interest of the mortgagor is sold in execution of a money-decree

MORTGAGE—continued.**9. FORECLOSURE—continued.**

510.

Second mortgage of the same property to the same person—Foreclosure decree on the first mortgage—Second suit on second mortgage—Practice—Foreclosure, Re-opening of.—On the 8th August 1864 the defendant B mortgaged certain property to the plaintiff R, and on the 5th April 1873 he further mortgaged the same to secure a further advance from the plaintiff. In 1877 the plaintiff brought a foreclosure suit on the first mortgage and obtained the usual foreclosure decree; and the defendant having made default in payment, his right in the property was foreclosed. The plaintiff and in 1882 on his second mortgage, which fell due in 1878. The lower Courts allowed his claim. On appeal by the defendant to the High Court,—*Held*, reversing the decree of the Court below, that the plaintiff could not foreclose in 1877 so as to vest the property absolutely in himself without treating the entire mortgage-debt as satisfied. The defendant might have pleaded in 1877 that the plaintiff could not foreclose, unless he abandoned his claim to be repaid the second advance when due. His omission to do so could not deprive him of his right to insist that the foreclosure decree passed in 1878 either precluded the plaintiff from suing on the second debt, or that the foreclosure should be re-opened. *BABU RAVJI v. RAVJI SVARUPJI*

[I. L. R., 11 Bom., 112]

511. ——— Foreclosure of property in two districts—*Beng. Reg. XVII of 1806, s. 8.*—According to s. 8, Regulation XVII of 1806, where mortgage-property is situate in two districts, an order of foreclosure relating to the whole property may be obtained in the Court of either district. *RASMOON DEBEA v. PRANKISHEN DAS*

[7 W. R., P. C., 66]

S. C. RAS MUNI DIBIAH v. PRAN KISHEN DAS

[4 Moore's I. A., 392]

PHOSONNO COOMAR ROY v. HARAN CHUNDER CHATTERJEE 5 C. L. R., 599

512. ——— Foreclosure of property partly in Calcutta and partly in mofussil—*Beng. Reg. XVII of 1806.*—The High Court, in a suit for foreclosure of property partly in Calcutta and partly in the mofussil, has no power to follow the procedure prescribed by Regulation XVII of 1806, which relates to the foreclosure of property in the mofussil; but it is bound to see that the defendant is not, by reason of the suit being brought in the High Court, deprived of any substantial advantage which he would have had if the suit had been instituted in the mofussil Court. *BANK OF HINDUSTAN, CHINA, AND JAPAN v. NUNDOLOLL SEN*

[11 B. L. R., 301]

513. ——— Foreclosure of property situated partly in Oudh and partly in the North-Western Provinces—*Beng. Reg. XVII of 1806, s. 8.*—Where a mortgage of land situated partly in the district of Shahjahanpur in the North-Western Provinces and partly in the district of Kheri in the province of Oudh was made by conditional sale, and the mortgagee applied to the District

MORTGAGE—continued.**9. FORECLOSURE—continued.**

Court of Shahjahanpur to foreclose the mortgage and render the conditional sale conclusive in respect of the whole property, and that Court granted such application,—*Held*, with reference to the ruling of the Privy Council in *Ras Muni Dibiah v. Pran Kishen Das*, 4 Moore's I. A., 392, that, where mortgaged property is situated in two districts, an order of foreclosure relating to the whole property may be obtained in the Court of either district, that the circumstance that Oudh was in some respects a distinct province from the North-Western Provinces did not take the case out of the operation of that ruling, inasmuch as Regulation XVII of 1806 was in force in Oudh as well as in the North-Western Provinces at the time of the foreclosure proceedings. *SURJAN SINGH v. JAGAN NATH SINGH*

[I. L. R., 2 All., 313]

b) DEMAND AND NOTICE OF FORECLOSURE.

514. ——— Demand from mortgagor—

Beng. Reg. XVII of 1806, s. 8—Foreclosure, Right of.—Under the terms of Regulation XVII of 1806, a demand from the mortgagor or his representative is a condition precedent to the right to take foreclosure proceedings. *GONESH CHUNDER PAL v. SHODANUND SURMA* I. L. R., 12 Calc., 138

515. ——— Demand for payment of mortgage debt—*Power of a minor to take a mortgage—Beng. Reg. XVII of 1806, s. 8.*—A conditional mortgagee applied for foreclosure omitting previously to demand from the mortgagor payment of the mortgage debt. On foreclosure of the mortgage, he sued for possession of the mortgaged property. The lower Appellate Court dismissed the suit on the ground that the foreclosure proceedings were invalid and ineffective by reason of such omission, and in so doing directed that the demand which the mortgagee should make prior to a fresh application for foreclosure should be limited to a certain amount. *Held* that the foreclosure proceedings were invalid and ineffective by reason of such omission and the suit had been properly dismissed; and that it was not competent for the lower Appellate Court to put any limitation on the amount to be demanded by the mortgagee prior to a fresh application for foreclosure. *BEHARI LAL v. BENI LAL*

[I. L. R., 3 All., 408]

516. ——— *Beng. Reg. XVII of 1806, s. 8.*—S. 8 of Regulation XVII of 1806 contemplates a previous demand of payment of the mortgage-money, and non-compliance therewith is a kind of cause of action for commencing foreclosure proceedings, and such demand must therefore necessarily be made before the mortgagee has the right of applying for foreclosure, and the omission to make such demand vitiates the foreclosure proceedings altogether. *Behari Lal v. Beni Lal*, I. L. R., 3 All., 408, followed. *KARAN SINGH v. MOHAN LAL* I. L. R., 5 All., 9

517. ——— Notice of foreclosure—*Issue of notification—Beng. Reg. XVII of 180*

MORTGAGE—continued.**9 FORECLOSURE—continued.**

538. — *Extension of time for payment—Fresh notice—Where a mort-*

RADHA MOHUN DEY 20 W. R., 179

539. — *Service of notice—Proof of service—Beng Reg XVII of 1806—Duty of Judge—Under Regulation XVII of 1806, the Zillah Judge is judicially required to see it proved before him that the notice of foreclosure has been duly served, and to record a proceeding certifying that the requirements of that Regulation have been duly carried out, and also any elucidating facts necessary to be recorded as occurring within the year of grace* *ABBAS ALY & AHMED COOMAR GHOSH*

[7 W. R., 123]

540. — *Service of notice—Proof of service—Beng Reg XVII of 1806 s 8—The provisions of s 8 of Regulation XVII of 1806 that a copy of the mortgagee's application to foreclose*

one who had foreclosed their mortgagor's equity

as mortgagees for possession, subject to their accounting to the mortgagors that being relief different from that prayed for in their plaint *BANK OF HINDUSTAN, CHINA, AND JAPAN & SHROSHIBALA DEBEE*

[I. L. R., 2 Calc., 311]

541. — *Service of notice—Proof of service—Beng Reg XVII of 1806,*

fore should be evidenced by the clearest proof, and should be in all cases, if not personal, at least such as to leave no doubt in the mind of the Court that the notice itself must have reached the hands or come to the knowledge of the mortgagor. *BARAT ALY & AZUMTOONISAA*

W. R., 1864, 40

542. — *Service of notice—Proof of service—The regulation as to service*

MORTGAGE—continued.**9 FORECLOSURE—continued.**

of a notice of foreclosure does not provide for any mode of service in substitution for personal service, though in some cases it has been held that personal service is not absolutely necessary, but to justify resort to any other mode of service it must be shown that in spite of efforts made for that purpose the notice cannot for some reason be personally served. A copy of the report of the *Dair* of the Civil Court,

SINGH & MAHTAB SINGH 3 N. W., 325

543. — *Service of notice—Mode of service—Where notice of foreclosure issues, and the serving officer finds that the mortgagor is not at home, it is sufficient if he affixes the notice on the door of the mortgagor's house, personal notice on the mortgagor not being essential* *SOORJOO KANT BANERJEE & KRISHNO KISHORE PODDAR*

14 W. R., 433

was made the Court refused to make such presumption *DENOSATH GANGOOLY & NURSING PROSHAD DASS*

[14 B. L. R., 87
[22 W. R., 90]

545. — *Service of notice—Mode of service—Beng Reg XVI of 1806—Minor—Regulation XVII of 1806 giving an special direction as to the person on whom notice of foreclosure is to be served, when the person for the time being entitled to the equity of redemption is a minor and no guardian of such minor has been appointed under Act VI of 1858 service of such notice if of foreclosure upon the minor and his mother will be deemed sufficient service* *DABEE PERSHAD & MAN KHAN*

3 N. W., 444

[7 W. R., P. C., 66]

S. C. RAS MUNI DEBIAN & FRANKISHEV DASS
[4 Moore's I. A., 393]

547. — *Service of notice—Sufficiency of service—It cannot be said that, if a notice of foreclosure addressed to a deceased mortgagor has reached the hands of his representatives,*

MORTGAGE—continued.**9. FORECLOSURE—continued.**

previously obtained against him, the purchaser at such sale is entitled to due notice of foreclosure proceedings instituted subsequently to the sale, but before the confirmation thereof. See *Bhyrub Chunder Bundopadhya v. Soudamini Dabee*, 1 L. R., 2 Calc., 141. *RAMESWAR NATH SINGH v. MEWAR JUGJEET SINGH* 1 L. R., 11 Calc., 341

529. ————— *Right to notice—Assignee of mortgagor—Beng. Reg. XVII of 1806, s. 8.*—Under s. 8, Regulation XVII of 1806, a mortgagee is bound to serve notice of foreclosure upon the assignee of the mortgagor, whether such assignee be of the whole or a portion of the mortgage premises, and whether notice of the assignment has been given to the mortgagee or not. *GANGA GOBIND MANDAL v. BANI MADHAB GHOSE*

[3 B. L. R., A. C., 172; 11 W. R., 548]

530. ————— *Right to notice—Assignee of mortgagor—Beng. Reg. XVII of 1806, s. 8.*—The assignee of a mortgagor, though purchaser of only a portion of the mortgaged property, is his "legal representative" within the meaning of s. 8, Regulation XVII of 1806, and as such entitled to notice of foreclosure. *SHEO GOLAM SINGH v. RAMROOP SINGH*

[15 B. L. R., 34 note; 23 W. R., 25]

531. ————— *Right to redeem—Mokuridar—Beng. Reg. XVII of 1806, s. 8.*—The holder of a maurasi mokurari pottah under the mortgagor is not a "representative" within the meaning of s. 8 of Regulation XVII of 1806, and is therefore not entitled to notice of foreclosure under that section. *Lalla Doorga Pershad v. Lalla Luchmun Sahay*, 17 W. R., 272, followed. *SRIPOTI CHURN DEY v. MOHIP NARAIN SINGH*

[1 L. R., 9 Calc., 643; 13 C. L. R., 119]

532. ————— *Beng. Reg. XVII of 1806.*—A second mortgagee under a mortgage-bond is entitled to notice of foreclosure under Regulation XVII of 1806. *NUDYAR CHAND CHUCKERBUTTY v. ROOP DOSS BANERJEE*

[22 W. R., 475]

533. ————— *Right to notice—Second mortgagee—Prior foreclosure of a second mortgage—Legal representative—Beng. Reg. XVII of 1806, s. 8.*—In the case of the prior foreclosure of a subsequent mortgage, *Quere*—Whether the second mortgagee is the mortgagor's legal representative for the purpose of the notice of foreclosure under s. 8, Regulation XVII of 1806. When the first mortgagee had no knowledge or cognizance of the second mortgage, or of the foreclosure proceedings taken under it, the second mortgage had no just ground of complaint that the notice of foreclosure was served, not on him, but on the mortgagor. *KALEE KISHORE CHATTERJEE v. TARA PERSHAD ROY*

4 W. R., 1

534. ————— *Right to notice—Purchaser from mortgagee.*—Property in the *mofussil* which had been mortgaged in 1862 to C by a deed in the English form containing the usual

MORTGAGE—continued.**9. FORECLOSURE—continued.**

power of sale on default of payment, and again in 1864 to T by deed of conditional sale, was sold by C under the power of sale and purchased by N. Previously to the sale, T had foreclosed. In a suit for possession of the property brought by the widow of T against N and the mortgagor, it appeared that no notice of foreclosure had been served on N. Held that N was entitled to such notice by the fact of his purchase, whether he had obtained possession or not, and that no notice having been served upon him, the suit was not maintainable against him. *BHANOOMUTTY CHOWDRAIN v. PREMCHAND NEOGEE*

[15 B. L. R., 28; 28 W. R., 96]

MOHUN LALL SOOKUL v. GOLUCK CHUNDER DUTT
[1 W. R., P. C., 19; 10 Moore's I. A., 1]

535. ————— *Sufficiency of notice—Foreclosure of share of mortgaged property.*—Two persons jointly held a mortgage, each having an equal share in it. The equity of redemption subsequently became vested solely in one of these persons. Held that, under the circumstances, a notice of foreclosure confined to a one-half share only of the mortgage (issued by the mortgagee, who had no interest in the equity of redemption) was sufficient, and that the foreclosure proceedings were not bad, although they related only to a part and not to the whole of the mortgaged property. *HUNOOMANPERSAUD SAHOO v. KALEEPERSAUD SAHOO*

W. R., 1864, 285

536. ————— *Sufficiency of notice—Effect of service of second notice of foreclosure.*—Where the notice of foreclosure was duly served on the mortgagor, no subsequent transfer of the property, whether voluntary or involuntary, could affect the validity of the notice, or impose on the mortgagee any new obligation in the way of causing a fresh notice to be served on the purchaser. The notice having been duly served on the mortgagor, his right and interest were subsequently sold in execution, and the mortgagee caused a second notice to be served on the purchaser. The foreclosure took place after the expiry of a year from the first, but within a year from the date of second notice. Held, under the circumstances of the case, that, as the second notice was merely for greater caution to bring to the knowledge of purchaser that notice had already been issued, and did not supersede the first notice, the foreclosure proceedings were regular, and the suit for possession was maintainable. *ZEMIN ALI v. HOSSEIN ALI*

2 Agra, Pt. II, 187

537. ————— *Fresh notice—Allowance of time by mortgagee beyond year of grace.*—A mortgagee, having issued notice of foreclosure on the mortgagor, allowed him six months' time in which to redeem, shortly before the expiry of the year of grace. The mortgagor died, and the mortgagee sued to recover the property. Held that fresh notice of foreclosure on the legal representative of the mortgagor was not necessary, the requirements of the law in the issue of the notice and the expiry of the year of grace having been complied with. *BAZLOOR RAHIM v. ABDULLAH*

[2 B. L. R., S. N., 5; 10 W. R., 359]

MORTGAGE—continued.**9. FORECLOSURE—continued.**

they have not had the notice nor that they were delinquent from paying or were not required to pay the amount of the mortgage upon receiving that notice. *RAM CRUSDER HALDER v. JONAS ALI KHAN*

[17 W. R., 230]

548.

Service of notice

—*Sufficiency of service.*—Where the defendant denied having received notice of foreclosure, and the witnesses called to prove service denied all knowledge of the matter. *Held* that the report of the pcon in the formal proceedings before another Court was inadmissible as evidence in the case, and the acquiescence of one mortgagor was not binding on the other. Transferees in possession are entitled to have notice of foreclosure. *TAZUN BEEB v. SHIB CRUSDER DUTTA*

10 W. R., 170

549

Service of notice

—*Proof of service—Suit by conditional vendee for possession.*—Where in a suit by a conditional vendee for possession after foreclosure service of notice is denied by the mortgagor or his representative, it is incumbent on the former to prove such service independently of the copy of the foreclosure proceedings. *SOOHEEN v. CHOORAMAN*

1 Agra, 172

550.

Service of notice

—*Fresh notice, Necessity of.*—Where the mortgagor sells his equity of redemption after foreclosure proceedings had been applied for and notices duly served on him, it is not necessary for the mortgagee to issue fresh notice on the purchaser; the requirements of the Regulation are satisfied by the service of the notice on the person who at the time of service is entitled to redeem. *JYAM GU v. KRISHAN KISHORE CHUD*

3 Agra, 307

551.

Service of notice

—*Proof of service—Beng. Reg. XVII of 1806, s. 8.*—The condition of foreclosure required by s. 8, Regulation XVII of 1806, is that the mortgagor should be furnished with a copy of the petition referred to in the section, and should have a notification from the Judge in order that he may, within a year from the time of such notice, redeem the property. In an action brought to recover possession as upon a foreclosure, it is essential for the plaintiff to satisfy the Court that the above condition has been complied with. In such a case, the service of the notice must be established by evidence. The mere return of the Nazir on the back of the Judge's purwannah to the effect that the mortgagor had been duly served, is not legal evidence of service. The functions of the Judge under s. 8 are merely ministerial. The year during which the mortgagor may redeem, runs, not from the date of the purwannah, or the issuing of it by the Judge, but from the time of service. Where there are several mortgagors, and it is not sought to foreclose the individual shares of each as against each but to foreclose the whole estate as upon one mortgage, one debt, and one entire right against all, service of the notice upon some only of the mortgagors is insufficient to warrant the foreclosure of the whole

MORTGAGE—continued.**9. FORECLOSURE—continued.**

estate or of any part of it. *Quare*—Whether there may not be cases of mortgages of separate shares, in which by proceedings properly framed foreclosure may take place in respect of some of such shares only. The mortgagor, when he seeks to foreclose, must discover and serve notice on those who are the then owners of the estate. *NORENDER NARAIN SINGH v. DWARKALAL MUNDUR*

I. L. R., 3 Calc., 397
[I. C. L. R., 369; L. R., 5 I. A., 18]

552.

Sufficiency of notice

—*Reg. XVII of 1806, s. 8—Service of copy of petition and of purwannah.*—The provisions of s. 8 of Regulation XVII of 1806 are not merely directory, but imperative, prescribing conditions precedent to the right of the mortgagee to enforce forfeiture of the estate of the mortgagor, and have for their object the protection of mortgagors from fraud. The prescribed procedure must be strictly followed. *Norender Narain Singh v. Dwarka Lal Mundur, L. R., 5 I. A., 18; I. L. R., 3 Calc., 397*, referred to and followed. *Held* that, although the mortgagor at the hearing of the foreclosure suit in the Court of first instance had not insisted on the insufficiency of the notification of the mortgagee's application to foreclose, but had relied on another defence, this could not be construed as a binding admission that notice had been duly given; that service of the copy petition for foreclosure, and of the purwannah signed by the Judge, was essential; and that the mortgagor was not precluded from questioning the regularity of the proceedings in his subsequent appeal. *MAHOPERSAD v. GAJJADHAR*

[I. L. R., 11 Calc., 111; L. R., 11 I. A., 188]

553.

Beng. Reg.

XVII of 1806, s. 8—Procedure—Mortgage by conditional sale—Demand of payment—Purwannah—“Official signature”—In proceedings for foreclosure of a mortgage under Bengal Regulation XVII of 1803, it is not necessary that the fact that a demand for payment was made before the petition for foreclosure was presented should appear on the face of the proceedings; it is sufficient if the plaintiff in his suit for possession shows that the demand was so made. A purwannah issued under the provisions of s. 8 of the abovementioned Regulation is not signed as required by that section with the “official signature” of the Judge when it bears merely the initials of that officer. *Jadhoo Persad v. Gajudhar, I. L. R., 11 Calc., 111*, referred to. *KUDBA BIBI v. WAJID KHAN*

[I. L. R., 16 All., 59]

554.

Sufficiency of notice

—*Mortgage by conditional sale—Suit for possession of mortgaged property—Beng. Reg. XVII of 1806, s. 8—Conditions precedent—Demand for payment of mortgage-money—Proof of service of notice—Proof of notice being signed by the Judge—Proof of forwarding copy of application with notice—Transfer of Property Act (IV of 1882).*—The provisions as to the procedure to be followed in taking foreclosure proceedings under Regulation XVII of 1806 are not merely directory, but strict satisfaction of the prescribed conditions

MORTGAGE—continued**9 FORECLOSURE—continued**

thereon laid down precedes the right of the conditional vendee to claim the forfeiture of the conditional vendor's right, and the various requirements of the condition have to be strictly observed in order

gagor Norinder Sarain Singh v Dwarka Lal Mendur, I L R 3 Calo, 397, and Madho Pershad v Gajadhar I L R, 11 Calo, 111, followed. In a suit for possession of immovable property by a deed of conditional sale,

to the mortgagee or that its terms were even

and that this was a course not sanctioned by the law
SITTA BAKISH v LALTA PRASAD
[I L R, 8 All, 388]

555. *Sufficiency of notice—foreclosure proceedings under Reg XVII of 1806, and subsequent procedure under Transfer of Property Act—Mortgage—Conditional sale—Suit for possession on foreclosure—Beng Reg XVII of 1806, ss 7, 8 Act IV of 1832 (Transfer of Property Act), ss 2 cl (c), and 86—The procedure laid down in the Transfer of Property Act may be applied to the case of foreclosure of a mortgage executed before the Act came into operation provided it be so applied as*

came into force, and after the expiry of the year of grace the money not having been paid, the mortgagee instituted a suit for possession on foreclosure, and when such suit was defended by a third party who had purchased the mortgaged property at an execution-sale and obtained possession before the commencement of the foreclosure proceedings and the necessary

MORTGAGE—continued**9 FORECLOSURE—continued.**

the mortgagee was entitled to extend the period of "one year" for the period of "six months" therein mentioned *Ganga Sahai v. Kishen Sahai, I L R 6 All 622, referred to. PERSHAD KORN v MAHABIR PERSHAD NARAIN SINGH I L R, 11 Calo, 583*

556 *Reg XVII of 1806 s 8—Provision as to the year of grace—Extension of time by mutual agreement—Transfer of Property Act, s 2 cl (c)—The year of grace allowed by s 8 Regulation XVII of 1806, is a matter of procedure, which it was open to the parties to extend by mutual agreement without prejudice to the proceedings already had under the section and upon the expiration of such extended period the mortgagee acquired an immediate right to have a decree declaring the property to be*

BAIJ NATH PERSHAD NARAIN SINGH v MOHESHWARI PERSHAD NARAIN SINGH I L R, 14 Calo, 451

557 *Conditional sale—Reg XVII of 1806 s 9—Transfer of Property Act—Procedure*

1885 by sale asked right to be was parties and the mortgage money was repayable on the 13th Nov 1891 On the 9th July 1891 the mortgagee

Act could not be applied to the case Although

party upon a suit for possession that year, and such right and liability came within the

MORTGAGE—continued.**9. FORECLOSURE—continued.**

they have not had the notice nor that they were debarred from paying or were not required to pay the amount of the mortgage upon receiving that notice.

RAM CHUNDER HALDER *v.* JONAD ALI KHAN
[17 W. R., 230]

548.

Service of notice—Sufficiency of service.—Where the defendant denied having received notice of foreclosure, and the witnesses called to prove service denied all knowledge of the matter, *Held* that the report of the peon in the formal proceedings before another Court was inadmissible as evidence in the case, and the acquiescence of one mortgagor was not binding on the other. Transferees in possession are entitled to have notice of foreclosure. TAZUN BIDEE *v.* SHIB CHUNDER DHUR 19 W. R., 170

549.

Service of notice—Proof of service—Suit by conditional vendee for possession.—Where in a suit by a conditional vendee for possession after foreclosure service of notice is denied by the mortgagor or his representative, it is incumbent on the former to prove such service independently of the copy of the foreclosure proceedings. SOOKHUM *v.* CHOORAMAN 1 Agra, 172

550.

Service of notice—Fresh notice, Necessity of—Purchase from mortgagor after notice served.—Where the mortgagor sells his equity of redemption after foreclosure proceedings had been applied for and notices duly served on him, it is not necessary for the mortgagee to issue fresh notice on the purchaser; the requirements of the Regulation are satisfied by the service of the notice on the person who at the time of service is entitled to redeem. JYRAM GIR *v.* KRISHAN KISHORE CHUND 3 Agra, 307

551.

Service of notice—Proof of service—Beng. Reg. XVII of 1806, s. 8.—The condition of foreclosure required by s. 8, Regulation XVII of 1806, is that the mortgagor should be furnished with a copy of the petition referred to in the section, and should have a notification from the Judge in order that he may, within a year from the time of such notice, redeem the property. In an action brought to recover possession as upon a foreclosure, it is essential for the plaintiff to satisfy the Court that the above condition has been complied with. In such a case, the service of the notice must be established by evidence. The mere return of the Nazir on the back of the Judge's purwannah to the effect that the mortgagor had been duly served, is not legal evidence of service. The functions of the Judge under s. 8 are merely ministerial. The year during which the mortgagor may redeem, runs, not from the date of the purwannah, or the issuing of it by the Judge, but from the time of service. Where there are several mortgagors, and it is not sought to foreclose the individual shares of each as against each but to foreclose the whole estate as upon one mortgage, one debt, and one entire right against all, service of the notice upon some only of the mortgagors is insufficient to warrant the foreclosure of the whole

MORTGAGE—continued.**9. FORECLOSURE—continued.**

estate or of any part of it. *Quære*—Whether there may not be cases of mortgages of separate shares, in which by proceedings properly framed foreclosure may take place in respect of some of such shares only. The mortgagee, when he seeks to foreclose, must discover and serve notice on those who are the then owners of the estate. NORENDER NARAIN SINGH *v.* DWARKALAL MUNDUR . . . I. L. R., 3 Calc., 397
[1 C. L. R., 369; L. R., 5 I. A., 18]

552.

Sufficiency of notice—Reg. XVII of 1806, s. 8—Service of copy of petition and of purwannah.—The provisions of s. 8 of Regulation XVII of 1806 are not merely directory, but imperative, prescribing conditions precedent to the right of the mortgagee to enforce forfeiture of the estate of the mortgagor, and have for their object the protection of mortgagors from fraud. The prescribed procedure must be strictly followed. *Norender Narain Singh v. Dwarka Lal Mundur, L. R., 5 I. A., 18; I. L. R., 3 Calc., 397*, referred to and followed. *Held* that, although the mortgagor at the hearing of the foreclosure suit in the Court of first instance had not insisted on the insufficiency of the notification of the mortgagee's application to foreclose, but had relied on another defence, this could not be construed as a binding admission that notice had been duly given; that service of the copy petition for foreclosure, and of the purwannah signed by the Judge, was essential; and that the mortgagor was not precluded from questioning the regularity of the proceedings in his subsequent appeal. MADHOPERSAD *v.* GAJADHAR [I. L. R., 11 Calc., 111; L. R., 11 I. A., 186]

553.

Beng. Reg. XVII of 1806, s. 8—Procedure—Mortgage by conditional sale—Demand of payment—Purwannah—"Official signature"—In proceedings for foreclosure of a mortgage under Bengal Regulation XVII of 1806, it is not necessary that the fact that a demand for payment was made before the petition for foreclosure was presented should appear on the face of the proceedings; it is sufficient if the plaintiff in his suit for possession shows that the demand was so made. A purwannah issued under the provisions of s. 8 of the abovementioned Regulation is not signed as required by that section with the "official signature" of the Judge when it bears merely the initials of that officer. *Madho Persad v. Gajudhar, I. L. R., 11 Calc., 111*, referred to. KUBBA BIBI *v.* WAJID KHAN [I. L. R., 16 All., 59]

554.

Sufficiency of notice—Mortgage by conditional sale—Suit for possession of mortgaged property—Beng. Reg. XVII of 1806, s. 8—Conditions precedent—Demand for payment of mortgage-money—Proof of service of notice—Proof of notice being signed by the Judge—Proof of forwarding copy of application with notice—Transfer of Property Act (IV of 1882).—The provisions as to the procedure to be followed in taking foreclosure proceedings under Regulation XVII of 1806 are not merely directory, but strict satisfaction of the prescribed conditions

MORTGAGE—continued.**10 ACCOUNTS—continued.**

Principal and interest. **SHUMBOONATH ROY v. TOROWAB ALI** W. R., 1864, 109

[W. R., 1864, 111

571. *Suit by second mortgagee against mortgagor and third mortgagee*—In a suit by a second mortgagee against his mortgagor and a third mortgagee, asking for an account and sale, the Court directed an account to be taken, not only of what was due to the plaintiff, but also of what was due to the third mortgagee. **AHINDRO BHOOSUN CHATTERJEE v. CHUNNOOLALL JOHREY** [L. L. R., 5 Calc., 101

572. *Liability to account—Duty of mortgagee of share of estate*—It is the duty of a mortgagee of a fractional share of an estate held in joint tenancy to see that he receives out of

[L. L. R., 100

573. *Mortgagee in constructive possession—Duty of mortgagee*—Held that an mortgagee in constructive possession is liable to account for the profits received by him or his agent, but not so charging him if the profits were received by the agent of the mortgagor. **JAFFREY BROUM v. UBER BEGUM** [3 Agrs, 153

moment. Since the repeal of the usury laws a mortgagor and mortgagee may make what contract they please with reference to the profits of the mortgaged estate, and the mortgagor may by contract deprive himself of the right to compel the mortgagee in possession to account for the profits. **MUNSOO LAL v. BEEB BROOHN SINGH** 6 W. R., 283

575. *Unfructuary mortgage—Redemption—Interest—Beng. Reg. XI of 1793* ss. 3, 4, 10, 11—Stat. 13 Geo. III, c. 63, s. 30—Act XI of 1855, s. 7—Notice

MORTGAGE—continued.**10. ACCOUNTS—continued.**

per cent had been received out of the profits, and claimed an account. Set up as a defence that the provisions of that Regulation were not applicable, as after its repeal by Act XXVIII of 1855, the mort-

[L. L. R., 5 All., 410.

HIDER BUKSH v. HOSSEIN BUKSH 4 W. R., 103
See **FEZLOOL RUHMAN v. ALI KUREEM** [5 W. R., 163

liability to an account, and although the principal sum advanced is very small. **DOORGA DASS v. ISHCH CHUNDER CHATTERJEE** 10 W. R., 267

PENJUM SINGH v. AMEENA KHATOOM 8 W. R., 6

578. *Right of purchaser for mortgagor to an account*—The fact that a purchaser of the equity of redemption received a certain sum for payment to the mortgagee does not preclude him from claiming for in the mortgage account of the income of the mortgaged property. **JAFFREY BROUM v. GUNGA RAM** 3 Agrs, 62

MORTGAGE—continued.**D. FORECLOSURE—continued.**

meaning of these terms as used in cl. (c), s. 2 of the Transfer of Property Act. *Mohammad Peshwan Naim Singh v. Ghulam Muhammad Peshwan Naim Singh* [I. L. R., 14 Cal., 599]

558.

Suit for fore-

*closure—Condition of sale—Reg. XVII of 1806, s. 8—Transfer of Property Act (II of 1892), s. 2—General Clauses Act (I of 1859), s. 11 (1 of 1897), s. 6—“Proceedings”—In a suit for foreclosure under a deed of condition of sale, where the due date of the deed expired, and notice of foreclosure was served while Regulation XVII of 1806 was in force, but before the expiration of the year of grace that Regulation had been repealed by the Transfer of Property Act,—Held, following *Mohammad Peshwan Naim Singh v. Ghulam Muhammad Peshwan Naim Singh*, I. L. R., 14 Cal., 599, that proceedings for foreclosure having been commenced under the Regulation, those proceedings were valid by s. 6 of the General Clauses Act (I of 1859). The “Proceedings” referred to in that section are not necessarily judicial proceedings only, but ministerial proceedings, as in the present case, the service of notice of foreclosure. *Umesh Chunder Das v. Chunder Singh**

[I. L. R., 15 Cal., 357]

559.

Sufficiency of

*notice—If signed by agent—Where a mortgage was made by the landholder for himself and as agent for other share, it was held necessary to issue notice of foreclosure both to the landholder and his co-shares. *Peshwan Singh v. Musooli Singh**

[2 Agra, Pt. II, 207]

560.

Omission to

*give notice—Effect of—Omission to give notice to the mortgagor or his representative is sufficient to vitiate the whole of the foreclosure proceedings. *Kutuboo Misra v. Jhoomook Lall Das**

[15 W. R., 283]

561.

Irregularity in

*foreclosure proceedings—Beng. Reg. XVII of 1806, s. 8—The omission of the Court to send with a notice of foreclosure a copy of the mortgagor's petition as required by s. 8, Regulation XVII of 1806, was held to be not such an irregularity as made void the foreclosure in a case where, subsequent to the issue of the notice, the mortgagor continued to live in the neighbourhood of the property, and the mortgagor erected buildings on it and used it as his own, without objection or claim on the part of the mortgagor. *Saligram Tewahnee v. Behanee Misra**

[W. R., 1864, 38]

562.

Beng. Reg.

*XVII of 1806, s. 7—Notice of foreclosure not signed by Judge—Invalidity of foreclosure proceedings—A notice issued under Regulation XVII of 1806, which does not bear the signature of the District Judge, but bears the seal of his Court only, is informal and bad, and the foreclosure proceedings in which such a notice has issued are invalid *ab initio*. *Basdeo Singh v. Mata Din Singh**

[I. L. R., 4 All., 278]

MORTGAGE—continued.**9. FORECLOSURE—concluded.**

563.

Form of notice

*—Omission to sign and seal by Judge—A notice of foreclosure, bearing the seal of the Court issuing it, but signed only by a Munasir, is not a sufficient compliance with the law, which requires that the notice be given under the seal and official signature of the Judge. *Seeth Hur Lall v. Manickpal**

[3 N. W., 176]

564.

Beng. Reg.

*XVII of 1806—A notice of foreclosure signed by the Munsif of the Judge's Court and bearing the seal of the Court, but not the signature of the Judge,—Held, following the principle of the decision in *Banoo Singh v. Mata Din*, I. L. R., 4 All., 276, not to be a valid notice under Regulation XVII of 1806, s. 8. *Dona Saru v. Nathai Khan**

[I. L. R., 13 Cal., 50]

565.

Sufficiency of

*notice—Beng. Reg. XVII of 1806, s. 8—Notice not signed by Judge—Held that, where the notice of foreclosure under s. 8 of Regulation XVII of 1806 was signed not by the Judge, but only by the Munasir, the foreclosure proceedings were void *ab initio*. Held also that the notice which was upon the record of the foreclosure proceedings and bore the mortgagor's signature must be regarded as the original notice in the matter; and that the acknowledgment of receipt of notice by the mortgagor did not cure the inherent defect of its non-signature by the Judge. *Hanuman Saran Singh v. Bhairon Singh**

I. L. R., 12 All., 189

10. ACCOUNTS.

566.

Claim for account—Suit on

*mortgage payable on demand—Where a mortgage-debt is payable on demand, the mortgagee ought to sue, not for interest only, but for an account and payment of what remains due on the mortgage for principal and interest up to the filing of the plaint. *Annapa v. Ganpati**

I. L. R., 5 Bom., 181

567.

Suit for account—Suit by

*mortgagor—Redemption—Ordinarily, a suit for an account upon a mortgage cannot be maintained by a mortgagor unless he asks for redemption also. *Hari v. Lakshman**

I. L. R., 5 Bom., 614

See SHANKARAPA v. DANAPA

[I. L. R., 5 Bom., 604]

568.

Obligation to account—

*Mortgagee in possession—Though a mortgagee be not an usufructuary mortgage, the mortgagee in possession is bound to give an account of the profits realized by him from the mortgaged property so long as it was in his possession, whether he took possession with or without the consent of the mortgagor. *Nir-kant Sein v. Jaenooddeen**

7 W. R., 30

569.

Mode of taking account—

Beng. Reg. XV of 1793, s. 10—According to s. 10, Regulation XV of 1793, it is the duty of the Court to take an account of the receipts of the mortgagee in possession, and then to adjust the mortgage account

MORTGAGE—continued.**10. ACCOUNTS—continued.**

great measure speculative and conjectural, their decision was set aside. **MURTHA LALL SOOKOON v. GO-LUCK CHUNDER DUTT**

[1 W. R., P. C., 18: 10 Moore's I. A., 1

589. — Onus of proof—

Income tax papers.—Where the accounts of a mortgagee who has been in possession are being taken, his income tax papers are inadmissible as evidence in his favour, though they may be used against him. It is the mortgagee's duty to keep regular accounts, and the onus lies in the first instance upon him. If he has not kept proper accounts the presumption will be against him, but this does not mean that all statements of the mortgagee against him must therefore be taken as true. **GHOLAM NOZUR v. EWANES**

[9 W. R., 275

590. — Usury of a mortgage—

Meaning of profits.—In the case of an usufructuary mortgage executed prior to Act XVIII of 1855, where the mortgagee sues for redemption on the ground that the usufruct had paid off the debt, and claims means profits on the allegation that the collected more

bound to produce the same by him. In the case of the mortgagee in this respect, the mortgagee is expected to adduce some proof to justify a decree in his favour for redemption, as well as for means profits. **HANUMATI v. RAMPHAREE DINGH**

7 W. R., 82

591. — Mode of taking accounts—

Mortgagee in possession.—As to the mode of taking accounts when the defendant is mortgagee in possession, see **HUNOOMAN PERSHAD PANDY v. MUNDEAS KOONWEREE**

[18 W. R., 81 note; 6 Moore's I. A., 393

592. — Mortgagee in possession—

Mode of taking account when the mortgagee was in possession of the estate as mortgagee, and also as lessee under a lease. **HUNOOMAN PERSHAD PANDY v. MUNDEAS KOONWEREE**

[6 Moore's I. A., 393

18 W. R., 81 note

593. — Arrangement by

some of the mortgagees and the mortgagor.—Where a mortgagee comes to an arrangement with three out of five joint mortgagees by which he consents to take as payment a money-decree against three of them, the amount of the decree must, in taking account of what is due on the mortgage, be considered as a sum paid in reduction of the liability of the five. **RAJ KANTH BOI CHOWDHURY v. KALEE MOHUN MOONERJEE**

22 W. R., 310

594. — Mortgage debt

Apportionment by mortgagees—Mortgagee's acquiescence—Liability according to shares.—Mortgagor co-shares having, after the mortgage transaction, effected division among themselves and apportioned their liability under the mortgage-debt according to their shares with the acquiescence of the mortgagee, held that, though the mortgagee was not bound to

MORTGAGE—continued.**10. ACCOUNTS—continued**

recognize the arrangement made by the mortgagees among themselves, still as he appropriated the amounts paid by some of the mortgagees in paying off their respective shares of the mortgage-debt without there being a special direction to that effect from those mortgagees he was entitled to recover the remainder of that debt from the share of the mortgagor co-sharer by whom it was due. **MAHADAJI HARI LIMAYE v. GANPAT-NET BHONDSHER**

I. L. R., 15 Bom., 257

595. — Government revenue—

Annual rents—Surplus revenue—Useful payments by mortgagee—Transfer of Property Act, IV of 1852 s 76 (c) and (h).—By the terms of an usufructuary mortgage it was provided that the annual profits of the mortgaged property should be taken to be a certain amount, that out of this amount the revenue should be paid annually by the mortgagee, that the balance should be taken by the mortgagee as representing interest on the principal amount of the mortgage money, and that the mortgagee should be redeemed on payment of the principal of the mortgage-money in a lump sum. It was further provided that the mortgagee should not be entitled to claim means profits nor the mortgagee to claim interest. The mortgagee alleged that he had purchased the equity of redemption of the mortgaged property in 1869, that since the purchase the mortgagee had not paid any revenue and therefore he, J. had been compelled to pay it, and that consequently the mortgage money had been paid out of the profits of the mortgaged property and a surplus was due, sued the original mortgagor and the mortgagee for possession or by redemption of the mortgaged property and for surplus profits or for possession of the mortgaged property on payment of any sum which might be found due. One of the defendants to the suit was that the mortgagee had already been redeemed in

mortgage, whatever the effect of such redemption might be as between the original mortgagor and the mortgagee, and such redemption was therefore not a bar to the suit, (ii) that the plaintiff was entitled to take into account the amount of revenue which he had been compelled to pay in reason of the mortgagee's default, (iii) that in the accounting the plaintiff was entitled to avail himself of annual rents; and (iv) that the mortgagee having had notice of the plaintiff's purchase and payments which he might have made to the original mortgagor on account of revenue after the purchase were improperly made, and could not be taken into account against the plaintiff. **JAMIR RAI v. GOBIND TIWARI**

[I. L. R., 6 All., 303

596. — Civil Procedure Code s. 111—Transfer of Property Act (IV of 1852), ss 2, 76—Set-off—Waste by mortgagee in possession—Redemption after date fixed for payment—Interest.—In a suit in 1855 to recover

MORTGAGE—continued.**10. ACCOUNTS—continued.**

579. ——— *Right of mortgagor to call on mortgagee to file account—Beng. Reg. XV of 1793—Beng. Reg. I of 1798.*—A mortgagor who has recovered possession of the mortgaged property by the deposit of the principal sum lent under Regulation I of 1798 is, in a suit subsequently brought by him for the adjustment of accounts during the period the mortgagee was in possession, entitled to force the defendant to file his accounts and swear to them according to the provisions of Regulation XV of 1793. *TUFUZZOOL HOSSEIN v. MAHOMED HOSSEIN*

[2 Hay, 17]

580. ——— *Production of accounts—Beng. Reg. XV of 1793, s. 11.*—Under s. 11 of Regulation XV of 1793, a mortgagee in possession is bound to produce the accounts of collection and disbursement, and to swear to them; and a plea of “no assets” will not exempt him from acting up to those requirements. *BHEECHUCK SINGH v. LUCHMINARAIN SINGH*

[1 Hay, 182]

581. ——— *Beng. Reg. I of 1798, s. 3.*—In a suit for foreclosure brought by a mortgagee under a bye-bil-wafia, or conditional bill of sale, it is not incumbent on the mortgagee to produce his accounts; the language of s. 3 of Regulation I of 1798 pointing to an adjustment of accounts in the event of accounting becoming necessary, in which case the lender is to account. *FORBES v. AMERROONISSA BEGUM*

[1 Ind. Jur., N. S., 117: 5 W. R., P. C., 47
10 Moore's I. A., 340]

582. ——— *Objection to items in accounts—Jamabandi papers—Beng. Reg. IX of 1833.*—A mortgagor is not precluded from questioning the correctness of the jamabandi annually filed by the patwari in obedience to the provisions of Regulation IX of 1833 by reason of his not having brought the incorrect entries to the notice of the Collector at the time the papers were filed. *TAIG ALI v. GOLAB CHOWDHREE*

[3 Agre, 314]

583. ——— *Mode of filing accounts—Conditional decree—Reconveyance, Power of Court for.*—In a suit for redemption of mortgaged property it was held (by BAYLEY, J.) that the law only requires that the mortgagee's account of receipts and disbursements shall be made out, filed in Court, and then sworn to as correct by the mortgagee. *Held* (by PHEAR, J.) that mortgagees are bound to exhibit the detailed items of all their actual receipts and disbursements to the time of accounting, verified by themselves, and accompanied by all vouchers. *Held* (by BAYLEY, J.) to be a rule of law which had been followed in practice, and which this Court must follow, that no redemption can be decreed in such a suit as long as there is any balance found due. *Held* (by PHEAR, J.) that plaintiff ought to obtain a decree for reconveyance on payment of the balance found to be due, with interest and costs of suits within a time specified, and that the Court is not bound by the previous practice, but has power to mould its decrees in such a way as to meet the exigencies of each case. *MOKUND LALL SOOKUL v. GOLUK CHUNDER DUTT*

[9 W. R., 572]

MORTGAGE—continued.**10. ACCOUNTS—continued.**

584.] ——— *Nature and form of account—Beng. Reg. I of 1798, s. 3—Estate papers.*—In a suit for possession of mortgaged lands, on the allegation of satisfaction of mortgage from the usufruct, the mortgagee is bound to furnish an account of the *bond fide* proceeds of the estate while in his possession. *Toujees, mehal melanee papers, jaidars, and jumma-wasil-baki papers* are not *per se* such an account within the meaning of s. 3, Regulation I of 1798, but may corroborate such account. *GOLUK CHUNDER DUTT v. MOHUN LALL SOOKUL*

[5 W. R., 271]

RAM LOOHUN PATUK v. KUNHYA LALL

[6 W. R., 84]

585. ——— *Beng. Reg. XV of 1893, s. 11.*—To enable a Court to ascertain the amount received by the mortgagee whilst in possession, the mortgagee should file his jumma-wasil-baki papers, and proceed generally in accordance with s. 11, Regulation XV of 1793. *AMERROODDEEN v. RAM CHUND SAROO*

[5 W. R., 53]

586. ——— *Proof of accounts—Beng. Reg. XV of 1793, s. 11—Co-sharers Nature of proof.*—Mortgagees in actual possession should, under s. 11, Regulation XV of 1793, be examined as to the truth of mortgage accounts, excluding persons who, according to the manners and customs of the country, are unable to appear in Court, or others who from their position are not likely to be acquainted with the actual state of facts. Where one of the co-sharers has a competent knowledge of the facts, his deposition is sufficient to prove the truth of the accounts. *RAM PHUL PANDEY v. WAHED ALI KHAN*

[14 W. R., 66]

587. ——— *Interest on sum due—Beng. Reg. XV of 1793, s. 10.*—The assignee of the mortgagor's rights in certain properties, of which a zur-i-peshgi lease for twenty-four years ending in 1286 had been granted, sued for an account and for possession on payment of what might be due (if anything). No rate of interest was specified in the zur-i-peshgi lease. *Held*, following the rule laid down by the Privy Council in *Shah Mukhun Lall v. Sreekishen Singh*, 12 Moore's I. A., 157, that, under s. 10 of Regulation XV of 1793, the lessee was entitled to simple interest at 1½ per cent. on the money found due. *Held* further that under s. 11 of the Regulation it was sufficient for the lessee to tender accounts showing the collections and disbursements and to swear to their correctness, and that it was not necessary in the first instance for him to put in the original accounts on which the accounts tendered were prepared. *TASADUK HOSSAIN v. BENI SINGH*

[13 C. L. R., 128]

588. ——— *Decision on insufficient proof.*—The Zillah Courts, in coming to a conclusion as to the state of the mortgage accounts having proceeded, not upon proof of the actual collections which were or ought to have been made by the mortgagees, but upon materials which were in a

MORTGAGE—continued.**10 ACCOUNTS—continued**

a mortgage, it lies upon the mortgagee to prove what is due from the mortgagor in respect of principal and interest. **GANGA MULIK v. BAYASI**

[I. L. R., 8 Bom., 669]

601. ———— *Confiscation of*

dants must account for excess of profits over interest in the years when they were in possession. **MAHOMED SALAMUT HOSSEIN v. SOOAH DAYER**

[3 Agra, 116]

602. ———— *Decree in mortgage suit giving mortgagee possession in default of payment of mortgage-debt—Relation between mortgagor and mortgagee—Mortgagee in possession*

MORTGAGE—continued**10 ACCOUNTS—continued**

mortgagee was not entitled to demand the payment of so much of the balances as had become irrecoverable by reason of his own laches, but that he was entitled to retain possession of the mortgaged estate till the balances recoverable at the time of the commencement of the redemption suit were paid by the mortgagor. **RAM PRASHAD v. KISHNA**

[3 Agra, 146]

603. ———— *Mortgagee's charges—Obligation of mortgagee in possession to repair—A mortgagee in possession of mortgaged premises is bound to keep them in necessary repair, and is at liberty to charge for the same with interest. **JOGENDRONATH MCILICK v. RAJ NARAIN PALOOF***

[9 W. R., 489]

607. ———— *Allowances to mortgagee for repairs—Mortgagee entitled to recover expenses incurred by him in repairs to the mortgaged premises.*

[I. L. R., 4 Bom., 584]

608. ———— *Allowances to mortgagee—Conditional sale—Expense of repairs.—In a suit brought to redeem certain property which had been conveyed by the ancestors of the plaintiff to the ancestor of the defendant it was held that the deed of conditional sale amounted in effect to a mortgage of the property, and that, according to the Courts of Equity, a mortgagee in possession ought to keep the premises in repair, and was held that the mortgagor was not entitled to redeem, unless upon payment of the sum so expended by the mortgagee, though such sum amounted to more than double the price for which the premises had been conditionally sold to the mortgagee. **MAHARAJA ASHPANDIARI v. HANUMANTA BEGAM***

[5 Bom., A. C., 109]

609. ———— *Allowances to mortgagee—Expenses of improvements and repairs—Mortgagee in possession is entitled to recover the expenses of improvements and repairs made by him to the mortgaged premises.*

ance of some official order was not necessary, but he was bound to comply with it if he may charge the mortgagor for necessary repairs and the latter will also be liable for any expenditure which he may himself have sanctioned. **AMEERULLAH v. RAM DOSS DOIS**

[3 Agra, 197]

HACHO BAGATI v. ANAJI MAYAJI PATIL

[5 Bom., A. C., 116]

610. ———— *Allowance for improvements and repairs—Claim made by a mortgagee in respect of money laid out in improvements after the expiry of the day fixed for repayment of the*

604. ———— *Mortgagee's charges—Mortgagee in possession, Duty of—Cultivation—Held that a mortgagee in possession of land was bound to cultivate the best crop which it was ordinarily capable of yielding. **GIRAJI BHIKAJI SONAR v. KERNAYERA HAJJI PATIL HAYOR***

[3 Bom., 211]

605. ———— *Suit for redemption of sur-i-pasgi mortgage—Balance which might have been recovered by mortgagee—Under the terms of a sur-i-pasgi mortgage, Held that the*

MORTGAGE—continued.**10. ACCOUNTS—continued.**

principal and interest due on a usufructuary mortgage executed on 15th June 1870, which contained a covenant for repayment of the secured debt on 5th June 1878, the defendant pleaded and proved that the mortgagee had permitted certain buildings on the mortgage premises to fall into a ruinous condition, and it appeared that the mortgagee had remained in possession after June 1878.—*Held* (1) that the defendant was entitled to have the amount of the loss occasioned by the plaintiff's failure to make repairs brought into the mortgage account under the Transfer of Property Act, s. 76, and a separate suit by him for that amount was not necessary; (2) that the profits derived by the mortgagee after the date fixed for repayment should be regarded as having been enjoyed in lieu of interest. *SHIVA DEVI v. JABU HEGGADE* I. L. R., 15 Mad., 290

597. ————— *Equity of redemption—Charge created by mortgagors—Power of executors—Property subject to a trust.*—*R* died leaving a will, under which he gave certain legacies and left the remainder of his property to two sons, *A* and *P*, whom he appointed executors. *P* died leaving his brother *A* and his widows executors to his will, under which his adopted sons, *M* and *S*, became entitled to his property. In consequence of some alleged mismanagement on the part of *A*, *M* and *S* filed a bill in the late Supreme Court and obtained a decree ordering the master of the Court to take an account of the rents and profits which had come into the hands of *P*'s executors. While these accounts were being taken, *A* died, leaving a will by which he appointed his widow and his grandsons executors, and after certain devises, not comprising a property in Tumlook, gave the residue of his immoveable property to the said grandsons, who took it subject to payment—(1) of such of the legacies as remained unpaid under *R*'s will, and (2) of what might be due by *A* to *P*'s estate. After *A*'s death, the above suit in equity was revived against his executors. The said executors borrowed money from one Mackintosh on the security of a bond and a mortgage of certain property which he obtained (including the Tumlook property) by an indenture, which recited that the said executors were still accountable in respect of the above legacies and debts, and provided that in the event of any default, or of any sale by Mackintosh, the said debts and legacies were to be paid out of the proceeds in the first instance before either mortgage-money, or interest, or costs, or expenses. After this a decree in the above suit was made against *A*'s executors for Rs. 1,32,000, and this not being paid, a writ of *fiery facias* was issued under which the Sheriff sold to *M* (benami) the equity of redemption in the Tumlook property subject to Mackintosh's mortgage. The latter then obtained a decree of foreclosure and commenced another suit against *M* which was compromised, and a decree made by consent in favour of Mackintosh, who then sold his interest in the mortgaged property to *M*. Under these circumstances, *M* claimed the right of proving the whole amount of the sum due to him in the equity proceedings without taking into account the Tumlook property; on the other hand, the creditors of *A* insisted that *M* was bound to treat the Tumlook property as an

MORTGAGE—continued.**10. ACCOUNTS—continued.**

asset of *A*'s estate. *Held* that *M* was bound to hold the property on the same terms as those on which he acquired it, viz., that it was subject to a trust in his own favour for the payment of his own debt. *MANOMATHO NATH DEY v. GREENDER CHUNDER GHOSE* 24 W. R., 386

598. ————— *Suit for possession of property mortgaged by zur-i-peshgi—Form of suit.*—Directions as to the nature of accounts to be taken in a suit for possession of property the subject of a zur-i-peshgi mortgage, and as to the form of suit of such a case. *SUYEDUN v. ZUHOOR HOSSEIN* [W. R., 1884, 44

599. ————— *Interest—Beng. Reg. XV of 1793, s. 10—Suit for redemption.*—Where a mortgage-deed stipulates for interest at 9 per cent., but other and collateral deeds, forming part of the same transaction, provide for further profits to the mortgagee,—*Held* that the mortgagor cannot, unless there be a positive legal enactment to that effect, be heard to plead that the written engagement, though not extending to the whole profit stipulated, must be adhered to as against the mortgagee, though the mortgagor may go beyond it to show the full extent of the profit, and so to be relieved from the consequences of his actual contract. The mortgagee may retain his pledge until he has received out of it his debt with interest at 12 per cent., the maximum allowed by s. 10 of Regulation XV of 1793. In a suit for redemption, on the ground that the debt has been satisfied with interest, the onus is on the plaintiff. A mortgagee is not an assurer of the continuation of the same rate of profit as his mortgagor was able to raise; hence an estimate of the rental preceding the mortgagor's possession is not sufficient proof of the profits in his time. The nature of the accounts which a mortgagor may call for from the mortgagee, explained. The mortgagee need not personally attest the accounts, if he has no personal knowledge of them. Presumptions against mortgagees for non production of accounts must have reasonable limits, and not be mere conjectures or based on in exact data. *MAKHANLAL v. SRIKRISHNA SINGH* [2 B. L. R., P. C., 44; 11 W. R., P. C., 19 [12 Moore's I. A., 157

600. ————— *Suit for redemption against mortgagee in possession—Account—Evidence.*—In a mortgage suit, where the defendant admitted that he was in possession of the property in dispute as a mortgagee under the plaintiff, but refused to put in evidence the mortgage-deed, which was insufficiently stamped,—*Held* that the plaintiff was entitled to redeem, on paying what was due from him on the mortgage, together with the costs of the suit; and that, if the mortgagee refused to pay the penalty and put the mortgage-deed in evidence, he could only be credited in the account with the sum which the plaintiff admitted to be the amount of the principal, and must be debited with the income derived from the land since he (mortgagee) had been in possession. In taking the account on

MORTGAGE—continued**10 ACCOUNTS—continued**

But the cost of the manager's being separately maintained during the father's life could be allowed. For the period after the father's death as the son became mortgagee himself such cost of maintenance could not be allowed. **KADIR VOHDIV v NEFRAN**

[**I L R, 28 Cal, 1**
L R, 35 I A, 241
2 C W N, 685

or carrying on trade or business and in the case of land personally occupied or cultivated by him (either with a fair occupant on rent or with the actual net profits realised from the use of the land. In ascertaining what those profits are with which the mortgagee ought to be credited in reduction of his mortgage-debt with interest thereon the mortgagee ought to be credited for his expenses in obtaining produce from the land and a moderate interest on

[**12 Bom, 88**

819 ——— **Imprvements and accretions Right to—Fruit trees**—The holder of a field on the survey tenure mortgaged it with possession secured by a registry of the mortgagee's name as occupant. Certain fruit trees coming under the operation of No 3 of the Revised Survey Rules were sold by the Government to the mortgagee as occupant. Held that the trees by the sale, became a portion of the mortgaged estate and as such, were liable to redemption on payment of the amount of the mortgage-money with interest of the money laid out in purchasing the trees, and of other reasonable expenses. **BAKSHIRAM GANAGRAM v DAKRU FUKARAM**

10 Bom, 369

820 ——— **Village mortgaged without specifying boundaries—Accretions to village—Rights of parties on redemption or foreclosure**

SHIV ANANT v VITHAL ANANT

11 Bom, 33

821 ——— **Expenses of redemption**—The mortgagee incurred the cost of the redemption of the land mortgaged to him by **ASHV v RAMJI BIV GOPALJI**

2 Bom, 220

822 ——— **Mortgage in possession—Payment by mortgagee, of an amount**

MORTGAGE—continued**10 ACCOUNTS—continued**

payable by mortgagee—Right of mortgagee to tack amount so paid to mortgage debt—Where a mortgagee in possession pays the assessment on the mortgaged land which was payable by the mortgagor he has a right to tack on the amount so paid to his mortgage-debt. **HANAYA NAIK v DEVARA HODRA NAIK**

I L R, 23 Bom, 440

823 ——— **Transfer of Property Act (IV of 1922) s 7—Mortgagee compelled to pay Government revenue which should**

amount of the mortgage-debt under s 72 of the Transfer of Property Act, 1882 or he may sue the mortgagor separately to recover the amount so paid.

PRASAD

I L R, 20 All, 401

824 ——— **Mortgage obligation of—Expenses incurred in protecting title—Stipulations not creating fresh obligations**—

Under the ordinary law of mortgage the mortgagor is bound so long as the equity of redemption remains with him to indemnify the estate against expenses incurred in protecting the title. So that where a mortgage-bond contains stipulations under which the mortgagor engages to repay to the mortgagee any costs he may incur in suits brought against him by the mortgagor's co-sharers and also any debts charged upon the mortgaged property which the mortgagee may pay the stipulations do not create any fresh obligation. **DAMODAR GUNJADHAR v VAMANRAY LAKSHMAN**

I L R, 9 Bom, 435

825

Right of pur-

826 ——— **Set by par-**

A portion of the mortgaged land was held by B, not as owner but as mortgagee from a third party who was alive when the suit was first filed, but who died after the settlement of the suit. The plaintiff then filed a supplementary claim to succeed as B's next heir. The defendants (the sons of the mortgagee) contended that the plaintiff could not succeed because the sale by B was invalid. They also claimed compensation for loss of the rents and profits of a portion of

MORTGAGE—continued.**10. ACCOUNTS—continued.**

depend on an equitable consideration of all the circumstances of the case. The English rule should be adopted under which the mortgagee is only allowed to claim for such outlay as has been required in order to keep the mortgaged premises in a good state of repair and to protect title. **RAMJI BIN TUKARAM v. CHINTO SAKHARAM** . 1 Bom., 199

611. *Directions for account—Mortgagee in possession—Buildings and improvements, Allowance for.*—The rule of Courts of Equity in England as to allowance to a mortgagee in possession not applied, because the mortgagee was led into a belief by the course of decisions in the late *Sudder Adawlut*, and the general understanding caused by those decisions, that, upon the non-payment by the mortgagor of the money at the time fixed, he had, according to the terms of the mortgage instrument, become the absolute owner of the property. The mortgagee was allowed the benefit for buildings erected, or permanent improvements made by him upon the mortgage premises. **ANANDRAY v. RAVJI** . 2 Bom., 214

612. *Cost of improvements on property—Transfer of Property Act (IV of 1882), s. 63—Right of prior mortgagee to add to the amount secured by his mortgage, outlay incurred by him in the preservation of the property mortgaged.*—Where a mortgagee of agricultural land had, with the consent of his mortgagors, spent money in repairing a well on the property which had been rendered useless from natural causes, it was held that such mortgagee was entitled, in a suit by a subsequent mortgagee against him for redemption, to add the amount so expended to the mortgage-debt to be paid by the plaintiff before he could obtain the decree for redemption claimed by him. **DURGA SINGH v. NAUBANG SINGH**

[I. L. R., 17 All., 282

613. *Compound interest on money spent to protect property—Interest on money expended on improvements on property.*—In a suit on a mortgage by conditional sale the mortgagee was held to be not entitled to compound interest upon the sum spent by him to protect the subject of the security, nor to interest upon the money expended by him in its improvement. **KISHORI MOHUN ROY v. GANGA BAHU DEBI**

[I. L. R., 23 Calc., 228
I. R., 22 I. A., 183

614. *Right of mortgagee in possession to execute repairs—Cost of improvements on redemption—Transfer of Property Act, s. 72.*—Transfer of Property Act, s. 72 (V), does not permit a mortgagee in possession to effect improvements. Consequently in a suit for redemption the costs of such improvements cannot be legally charged against the mortgagor seeking to redeem. **ARUNACHELLA CHETTI v. SITHAYI ANNAL**

[I. L. R., 19 Mad., 327

615. *Value of improvements on redemption, Depreciation of, between*

MORTGAGE—continued.**10. ACCOUNTS—continued.**

decree and date of redemption.—A decree for the redemption of a kanam in Malabar was passed in December 1894 when there were on the land improvements in the form of trees, etc., to the value of Rs. 429. Within the six months limited by the decree for redemption, the mortgagor applied for execution, and it appeared that the value of improvements had diminished by the loss of trees of the value of Rs. 157. The loss was the result of want of water and was not attributable to neglect on the part of the mortgagee. *Held* that the loss should fall on the mortgagee. **KRISHNA PATTAR v. SRINIVASA PATTAR** . I. L. R., 20 Mad., 124

616. *Purchase of mortgaged property by decree-holder for inadequate price—Right of purchaser—Improvements, Right to value of, on redemption.*—A mortgaged land to B, and then to C. B sued on his mortgage and obtained a decree for sale without joining as defendant C, of whose mortgage he had notice; D, the son of the decree-holder, became the purchaser in execution and improved the land at a considerable cost. C now sued the sons and representatives of A and B (both deceased) on his mortgage, and sought a decree for sale. *Held* that the purchaser was not entitled to allowances for improvements. **RANGAYYA CHETTIAR v. PARTHASARATHI NAICKAR**

[I. L. R., 20 Mad., 120

617. *Account of redemption of a mortgage—Appropriation of payments—Set-off of rents and profits—Expenditure on improvements—Interest—Transfer of Property Act (IV of 1882), s. 76—Lower Burma Courts Act (XI of 1889), s. 4.*—That an account should have been taken between mortgagor and mortgagee in possession consistently with the direction in s. 76 of the Transfer of Property Act, 1882, is in accordance with the "justice, equity, and good conscience" required to be administered by s. 4 of the Lower Burma Courts Act, 1889. It made no difference, in the result of the account, whether the rents and profits received by the mortgagee in each year were set off year by year against the amount expended by the mortgagor or that year for improvement and management, or their total was deducted at the end of possession from the sum expended by him. The balance of his expenditure had, in fact, exceeded in each year that of his receipts and carried only simple interest. The mortgage-debt decreed bore compound interest. *Held* that the account need not be taken on the principle that the mortgagee should give credit for his receipts, first, in reduction of that debt, which was most burdensome to the debtor. There was no obligation to pay off the compound interest debt before the other. Whether the improvements and the expenditure were reasonable, were questions of fact on which two Courts had concurred; and there was no ground for interference with their finding. During the life of the mortgagee, his son managed the property, living on it at a distance. The account directed was of sums "laid out in management." Salary to his manager was not paid, and in the account could not be allowed, such allowance not having been decreed.

MORTGAGE—continued.**10 ACCOUNTS—continued**

is shown to be unreasonable. *ROGHONATH & LUCHMUN SINGH* . . . 1 Agra, 133

[8 Bom., A. C., 200]

633 ———— *Suit by mortgagee for possession under usufructuary mortgage—*

tioned by the parties, that there was

[24 W. R., 275]

634 ———— *Mortgages in possession—Interest*—The proper sum to be allowed a mortgagee for surintendence is what he has actually spent as expenses of his management. No decree should be given against a person as being the real mortgagee without evidence of the beneficiary holding. A mortgagee is entitled to interest on account of the balance of paid rents paid by him. *BRUOGHAT SINGH ROY & BRUOGHAT DASS* 1 W. R., 133

635 ———— *Interest—Mode of calculation*—There is no law restricting a mortgagee to the receipt by way of interest of the amount of principal lent. The mode of calculation to be followed in such cases is every year to add the amount of interest to the principal sum, and then deduct the value of the usufruct. *SHANT ALI & KHER ROY* . . . [3 W. R., 289]

MORTGAGE—continued**10. ACCOUNTS—continued.**

DOORGA CHURN PAHARIE & CHITTOORHOOD DASS [5 W. R., 200]

636 ———— *Suit for redemption—Interest—Amount of interest allowed to mortgagee—Transfer of Property Act (11 of 1882) s. 68*—In 1882 the plaintiffs sued to redeem a mortgage effected in 1833. The Court of first instance allowed the mortgage interest from the date of the bond. The Appellate Court reduced the interest awarded to the period of six years. *Held*, reversing the decision of the lower Appellate Court, that the mortgagees were entitled to claim interest from the date of the bond up to the date of the decree. *Hari Mahadaya Saraskar v. Balamkhat Raghunath Khare*, 1 L. R., 9 Bom., 233, referred to. No provision of limitation is made by the Limitation Act for the payment of interest on the sum due to the mortgagee. In s. 68 of the Transfer of Property Act the mortgage-money is interpreted to include the interest due, and no time to the payment of interest is fixed. *Irishlakar Chintaman Dikshit v. Indurang Finayak Dikshit*, 12 Bom., 68, followed. *DAUDHAI RAMBHAI & DAUDHAI ALINDHAI*

[1 L. R., 14 Bom., 113]

637 ———— *Mortgage trans-*

638 ———— *Provision for payment of interest out of usufruct*—Where the usufruct of mortgaged property was to be enjoyed in lieu

639 ———— *Mortgage with decree for account and sale—Withdrawal of execution proceedings—Principle on which accounts are to be taken*—A mortgagee, who has obtained a decree for an account and sale is not entitled to withdraw from the taking of accounts in his execution proceedings when those accounts appear to be going against him. *DOOLEY CHAND & OMDA KHANNA alias HARU SHIBHU* 1 L. R., 6 Cal., 377; 7 C. L. R., 375

640 ———— *Right to re-open accounts—Suit by mortgagee for possession under usufructuary mortgage*—In a suit to recover possession of land in the possession of the mortgagee or under a usufructuary mortgage (which is in reality a suit between the mortgagee and mortgagee for an adjustment of the account between them), if upon

MORTGAGE—continued.**10. ACCOUNTS—continued.**

the mortgaged property redeemed from B by the original owner. The Subordinate Judge allowed the plaintiff's claim. On appeal the District Judge confirmed his decree, being of opinion that the sale was valid as against the defendant, because there were no collateral heirs. On appeal to the High Court, — *Held* that the defendants were not entitled to any compensation on account of the redemption of a portion of the mortgaged property by the original owner, because they were aware that the mortgage to B was liable to be redeemed, and they (defendants) took such a precarious security at their own risk. In a redemption suit the defendant (mortgagee) is ordinarily entitled to his costs, unless he has refused tender of the amount due to him, or has so misconducted himself in the course of the suit as to induce the Court to subject him to a penalty. **DHONDU RAM CHANDRA v. BALKRISHNA GOHSD**

[I. L. R., 8 Bom., 190

827.

Costs incurred

by mortgagee—*Transfer of Property Act (I) of 1882*, s. 72.—Land, having been mortgaged to the defendant, was let by him for rent to the mortgagee. The rent fell into arrear, and the mortgagee sued and obtained a decree for the rent in arrear and for possession. Subsequently after the mortgagee's death, her heir, the present plaintiff, unsuccessfully resisted execution of the decree obtained against her, asserting that she had no right to mortgage the property which, it was alleged, had belonged to his father. The plaintiff now brought a suit for redemption. *Held* that in taking the account the defendant was entitled to have credit for the costs incurred in the proceedings between him and the plaintiff, but not in the proceedings between him and the original mortgagee. **POKHEE SAHEB BEARY v. POKHEE BEARY**

[I. L. R., 21 Mad., 34

828.

Interest—Proof

of accounts—*Failure to keep or omission to produce accounts.*—In seeking to have the account taken and to have it ascertained whether the mortgagee has by means of the usufructuary mortgage obtained more than 12 per cent. interest, and if so, that the surplus may be applied in reduction of the principal, the mortgagee is not asking the Court to authorize a departure from the agreement of the parties (where there is one) that the mortgage-debt should bear no interest during a certain period. The onus is on the mortgagee to prove that the principal sum has been paid or satisfied; and on the mortgagee to show what, if anything, is due to him for interest. Failure of the mortgagee in his duty, as trustee for the mortgagee, to keep accounts, and to produce proper accounts, is to be regarded as misconduct which ought to be taken into consideration upon the question of costs. **KALLYAN DASS v. SHLO NUNDON PURSHAD SINGH**

18 W. R., 65

829.

Usury laws—

Beng. Reg. XXXII of 1803—Obligation on mortgagee to file accounts.—In a mortgage dated in 1852 of mahikana fixed for the period of settlement, it was agreed that the mortgagee should collect the village

MORTGAGE—continued.**10. ACCOUNTS—continued.**

sums, pay the Government demand, and take the mahikana, of which part was to be received by him as interest on the money lent at one per cent. per mensem, and the balance, viz., Rs65 per annum, was to be retained by him as the costs of collection. No accounts were to be rendered of the mahikana collected during the time of the mortgagee's possession. If this agreement had been a contrivance for securing to the mortgagee a higher rate of interest than that to which he was then by law entitled, it would have been void under the usury laws (in force under Regulation XXXIV of 1803 until the passing of Act XXVIII of 1855), and would not have prevented the accounts from being taken. But as the Courts found that the Rs65 per annum constituted a fair percentage, which it had been *bona fide* agreed should be allowed to the mortgagee for the costs of collection, it was held that the agreement had been rightly treated as a sufficient answer to a suit based on the assumption that the whole of the mortgage-money, principal and interest, would be satisfied if the accounts contrary to the agreement were taken on the basis of charging the mortgagee with the Rs65, or so much thereof as he should fail to prove had been actually expended in the collection. If the amount received by the mortgagee had been fluctuating, production of the accounts might have been necessary for a decision on the validity of the agreement set up. But it could not be said that by no agreement could a mortgagee relieve himself from the obligation of filing accounts under the 9th and 10th sections of Regulation XXXIV of 1803; and in this case he had done so: the only sum that he was to receive beyond the interest allowed by law being an unvarying balance found to be a fair allowance for the costs of collection. **BADRI PRASAD v. MURZI DHAR**

I. L. R., 2 All., 593
[I. R., 7 I. A., 51

830.

Mortgagee in

possession—*Interest—Beng. Reg. XV of 1793.*—In taking the accounts as between a mortgagee and a mortgagee in possession, the interest may be set off from time to time against the rents and profits, the mortgagee only accounting to the mortgagee for any rents, profits, and interest on the same which he may have received over and above the interest due to him upon the debt. **RADHABENODE MISSEER v. KRPA-MORZE DABEE** . 10 B. L. R., 386: 17 W. R., 262
[14 Moore's I. A., 443

831.

Interest on col-

lections by mortgagee—*Commission on amount collected.*—*Held* that in cases of redemption of mortgage the mortgagee should not be charged with interest on the money collected by him, but that the money so collected should first be applied in payment of interest accruing due on the mortgage-debt; and, if there is any surplus, in reduction of the principal mortgage-debt. *Held* further that the mortgagee is entitled to commission on the gross amount of collections to cover the expenses of collection, etc., and this he is entitled to get at the rate of 10 per cent., unless there is any express stipulation to the contrary, or it

MORTGAGE-DEBT—concluded

See MORTGAGE—REDEMPTION—REDEMPTION OF PORTION OF PROPERTY

[13 Moore s L A. 404

24 W R, 47

15 B L R, 303

I L R, 4 Calc, 73

I L R, 9 Mad, 453

I L R, 17 All, 63

I L R, 21 Bom, 544

See TRANSFER OF PROPERTY ACT s 82

[I L R, 18 Calc, 320

I L R, 14 Mad, 71

I L R, 19 All, 545

————— Payment of portion of—

See LIMITATION ACT 1877, ART 146
(1871 ART 149)

[I L R, 4 Calc, 283

See CASES UNDER MORTGAGE—REDEMPTION—REDEMPTION OF PORTION OF PROPERTY

MORTGAGED PROPERTY

————— Decree against—

See CASES UNDER DECREE—CONSTRUCTION OF DECREE—MORTGAGE

See CASES UNDER DECREE—FORM OF DECREE—MORTGAGE

————— out of jurisdiction

See CASES UNDER JURISDICTION—SUITS FOR LAND—GENERAL CASES—FORECLOSURE

See CASES UNDER JURISDICTION—SUITS FOR LAND—GENERAL CASES—LIEV

See JURISDICTION—SUITS FOR LAND—GENERAL CASES—REDEMPTION

[I L R, 1 All, 431

1 Ind. Jur., N S, 319

MORTGAGEE

————— Acknowledgment by—

See LIMITATION ACT s 19—ACKNOWLEDGMENT OF OTHER RIGHTS

————— in possession.

See CASES UNDER MORTGAGE—ACCOUNTS.

See CASES UNDER MORTGAGE—POSSESSION UNDER MORTGAGE

MORTGAGOR AND MORTGAGEE.

See CASES UNDER EQUITY OF REDEMPTION

See CASES UNDER MORTGAGE

See PARTIES TO CONVEYANCE.

[13 B L R, Ap, 7

MORTMAIN, STATUTES OF—

See WILL—CONSTRUCTION

[14 B L R, 442

MOSQUE.

See CASES UNDER MAHOMEDAN LAW—MOSQUE.

————— Management of—

See MAHOMEDAN LAW—FIDOWMENT

[I L R, 18 Bom, 401

MOTHER

See HINDU LAW—ALIENATION—ALIENATION BY MOTHER.

See CASES UNDER HINDU LAW—GUARDIAN—POWERS OF GUARDIANS.

See HINDU LAW—GUARDIAN—RIGHT OF GUARDIANSHIP I L R, 5 Calc, 43
[7 W R, 73
3 W R, 194

See HINDU LAW—INHERITANCE—SPECIAL HEIRS—FEMALES—MOTHER.

See CASES UNDER MAHOMEDAN LAW—GUARDIAN

————— Power of—

See CASES UNDER GUARDIAN—DUTIES AND POWERS OF GUARDIANS

————— Unchastity of—

See CASES UNDER HINDU LAW WIDOW—DISQUALIFICATIONS—UNCHASTITY

MOTIONS

————— Taking further evidence on—

See PRACTICE—CIVIL CASES—MOTIONS

MOULMEIN JUDGE OF—

See JURISDICTION—ADMIRALTY AND VICE-ADMIRALTY JURISDICTION

[24 W R, 50

MOVEABLE PROPERTY

See ATTACHMENT—ATTACHMENT BEFORE JUDGMENT I L R, 18 All, 180

See CRIMINAL BREACH OF TRUST
[I L R, 23 Calc, 373

See PERPETUITIES
[I L R, 20 Bom, 511

See REGISTRATION ACT 1877 s 3
[3 Agra, 157
3 R L R, A C, 194

See REGISTRATION ACT 1877 s 17
[I L R, 10 All, 20

See CASES UNDER SMALL CAUSE COURT. MOFFESIL—JURISDICTION—MOVEABLE PROPERTY

MORTGAGE—continued.**10. ACCOUNTS—continued.**

taking an account it appears that the mortgagee has been fully satisfied, the mortgagor is not only entitled to have the property back, but (the decision in *Motee Soonduree v. Indrajee Kowaree, Marsh., 112*, being overruled) the Court is bound as a Court of Equity, and acting upon the principle that it is always the aim of a Court of Equity to finally determine as far as possible all questions concerning the subject of the suit, to cause an account to be taken up to the time of the decree, the account so taken being considered binding and the parties not being at liberty, except under peculiar circumstances, to reopen it in another suit. *KULYAN DASS v. SHEO NUNDUN PURSHAD SINGH*. 18 W. R., 65

and see *ROY DINKUR DYAL v. SHEO GOLAM SINGH*
[22 W. R., 172]

and *LUTAFUT HOSSAIN v. CHOWDHRY MAHOMED MOONEM* 22 W. R., 269

641. ———— **Realization by mortgagee of sum in excess—Interest—Usufructuary mortgage.**—Where a mortgagee under a usufructuary mortgage has realized a sum of money in excess of the amount due to him, it is an equitable practice to allow to the mortgagor interest on such sum at the same rate at which interest has been allowed to the mortgagee on his mortgage-debt. *BEHOO SINGH v. ROY SHEO SAHAY* 1 N. W., 56 : *Ed.* 1873, 111

642. ———— **Suit for account and redemption—Form of decree.**—In a suit for account and redemption, if the mortgagee, on taking the accounts, is found to have been overpaid, the general practice is to order the payment, by him, of the balance due to the mortgagor, with interest from the date of the institution of the suit. *JANOJI v. JANOJI* I. L. R., 7 Bom., 185

643. ———— **Suit for redemption of two distinct mortgages—Right to separate accounts—Dekkan Agriculturists' Relief Act (XVII of 1879), s. 13—Mode of taking accounts.**—By two separate mortgages certain land were mortgaged in 1830 by the plaintiff's father to the defendant. In 1882 the plaintiff as an agriculturist brought the present suit for redemption of the lands comprised in both mortgages. *Held* that separate accounts of the two mortgages should be taken. The mortgages were distinct transactions relating to different lands, and s. 13 of the Dekkan Agriculturists' Relief Act contains no words enabling the Court to treat them as one. The fact of their being included in the same suit could not affect the question. In taking the accounts of the above mortgages it was proved that on one mortgage there was a sum of Rs. 5,075-13-2 due to the plaintiff (mortgagor) by the defendant (mortgagee), and on the other mortgage a sum of Rs. 3,774-2-7 due to the defendant by the plaintiff. The plaintiff contended that, although by the ruling in *Janoji v. Janoji, I. L. R., 7 Bom., 185*, he could not compel payment of the Rs. 5,075-13-2 due to him on the one mortgage, he was entitled to have so much of it as might be necessary set-off against the Rs. 3,774-2-7

MORTGAGE—concluded.**10. ACCOUNTS—concluded.**

still due by him on the other mortgage. *Held* that on the authority of *Janoji v. Janoji, I. L. R., 7 Bom., 185*, the plaintiff had no legal claim to the Rs. 5,075-13-2, and, that being so, the existence of that balance in his favour on account of one mortgage could not be treated as extinguishing the claim of the defendant to the Rs. 3,774-2-7 due on the other mortgage. The plaintiff as an agriculturist mortgagor was enabled to free his land from both the mortgages on the favourable terms provided by the Dekkan Agriculturists' Relief Act (XVII of 1879), but was precluded from compelling the mortgagee to refund what the latter had personally acquired under the terms of his contract of mortgage. *RAMCHANDRA BABA SATHE v. JANARDAN APAJI*
[I. L. R., 14 Bom., 19]

644. ———— **Binding effect of account—Mortgagor and mortgagee—Puisne mortgagee.**—*Quære*—Whether the account arrived at in a decree obtained by the prior mortgagee against the mortgagor only is binding on a puisne mortgagee who had no notice of the subsequent incumbrance. *SANKANA KALANA v. VIRUPAKSHAPA GANESHAPA*
[I. L. R., 7 Bom., 146]

645. ———— **Assignee of mortgage—Suit for redemption.**—In India, as in England, a mortgagee may transfer his rights to a third person by way of assignment, but such transfer must be without prejudice to the rights of the mortgagor, and in a suit by a mortgagor for redemption where the assignment has been made without the knowledge of the mortgagor, the assignee is bound by the state of the account between the mortgagor and mortgagee. *CHINNAYYA RAWUTTAN v. CHIDAMBARAM CHETTI* I. L. R., 2 Mad., 212

646. ———— **Error in account—Ground for reforming account—Wrong statement of account agreement to pay mortgage-debt by instalments.**—In a written agreement by a debtor to pay his debt by instalments securing the payment by a mortgage of land, the amount of the debts was erroneously stated to be greater than it actually was. In a suit on the agreement, *Held* that such an error was ground for reforming the account, but not for setting aside the agreement. *SETH GOKUL DASS GORAI DASS v. MURRI*
[I. L. R., 3 Cal., 602 : 2 C. L. R., 156
I. R., 5 I. A., 78]

MORTGAGE-DEBT.**Apportionment of—**

See **CONTRIBUTION, SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR.**
[3 B. L. R., A. C., 357]

See **MORTGAGE—ACCOUNTS.**
[I. L. R., 15 Bom., 257]

See **CASES UNDER MORTGAGE—MARSHALLING.**

MULTIFARIOUSNESS—continued

which he has been dispossessed at different periods and under different circumstances, and claims them under the same title and from the same party, there is to impropriety in the two claims being joined in one suit. **JESOOKEE CHOWDHURIE v DWARKANATH CHOWDHURIE** 1 May, 555

to secure the soundness of the particular decision and perhaps the avoidance of discordant decisions in different cases upon facts nearly the same. **VASUDEVA SHANKHAGA v KULEADI NARAYAN** [7 Mad., 290

8. — *Suit by members of tarwad to set aside alienations of karnavan*—A suit was brought by the junior members of a tarwad, which consisted of three stamons and three tavaras, against the karnavan and others, including certain persons to whom he had alienated some tarwad property. The plaint, as originally framed, prayed (1) for the removal of the karnavan, (2) for a declaration that defendants Nos. 2 to 8, the senior anandiravans, had forfeited their right of succession to him (3) for the appointment of the plaintiff in his place, (4) for a declaration that his alienations were invalid as against the tarwad, and (5) for possession of the property alienated. Subsequently, the plaint was amended by the order of the Court by striking out items 2 and 5 of the prayer, and finally the plaintiffs further amended the plaint and sued only for a declaration that the alienations in question were invalid. *Held* that the suit was not bad for multifariousness. **Vasudeva Shankhaga v Kuleadi Narayan**, 7 Mad., 290, considered. **MAHOMED v KRISHNAN** 11 Mad., 108

10. — *Civil Procedure Code, s. 45—Suit for declaration that alienations were not binding—Malabar law—Suit by junior members of tarwad*—Suit by some of the junior members of a Malabar tarwad against the karnavan and the other members of the tarwad, and certain persons to whom some of the tarwad property had been alienated by the karnavan, for a declaration that the alienations were not binding on the tarwad. *Held* that the suit was not bad for multifariousness. **Vasudeva Shankhaga v Kuleadi Narayan**, 7 Mad., 290, followed. **ABDUL v AYAZ** [11 L. R., 12 Mad., 234

11. — *Assignment of parties*—The plaintiff, a talukdar, obtained a decree under a 32 of the Rent Act (Bengal Act VIII of 1900) to eject his tenant for arrears of rent and to obtain possession of his tenure. In attempting to execute that decree he was opposed as regards certain plots, which he alleged were comprised in the tenure, by parties in possession, who instituted proceedings

MULTIFARIOUSNESS—continued.

against him under a 332 of the Civil Procedure Code. These proceedings resulted in their claims being decided in their favour. The plaintiff thereupon instituted one suit against his judgment-debtor and all parties who had opposed him in such proceedings.

and which had been set up by them in the proceedings under a 332, were quite distinct one from another, and that there had been no collusion or combination against them to keep the plaintiff out of possession, but on the contrary that the defences were bona fide. *Held* that the suit was bad for misjoinder of causes of action, and was properly dismissed. **RAM NARAIN DUT v ANANDA PRASAD JASHI** [11 L. R., 14 Calc., 681

12. — *Misjoinder of parties—Civil Procedure Code (1882), ss. 25, 31, 373, and 375—Error not affecting merits of suit—Withdrawal of suit—Meaning of "cause of action"*—Where a plaintiff alleges, himself to be entitled on the death of a Hindu widow to the possession of certain immovable property upon the death of such widow. *defer* *lisiti*

cause of action. **Vasudeva Shankhaga v Kuleadi Narayan**, 7 Mad. 290, **Rames Krishna v Koodan Lal** 2 N. W., 221 **Koonan Lal v Himmatt Singh** 3 N. W., 86 **Narasingh Das v Mangal Das**, 1 L. R., 5 All., 163 **Kachar Bakshi v Vasu v Bai Kathore**, 1 L. R. 7 Bom. 293 **Sudhendu Motun Roy v Durga Das** 1 L. R., 14 Calc., 433; and **Ram Narain Dut v Ananda Prasad Jashi**, 1 L. R., 14 Calc., 681 referred to. **GANESH LAL v KHAIYATI SINGH** 1 L. R., 18 All., 279

13. — *Civil Procedure Code (1882), ss. 31, 45, and 53—Return of plaint*—The term "cause of action" as used in ss. 31 and 45 of the Code of Civil Procedure is there used in the same sense as it is used in English law. A cause of action means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved. Where three plaintiffs brought a joint suit for the possession of immovable property in which two of them were claiming half the property under a title by inheritance, and the third was claiming the other half of the property in virtue of a sale thereof to him by the first two plaintiffs.—*Held* that the suit so framed was bad for misjoinder of causes of action, and that the plaintiff

MOVEABLE PROPERTY—concluded.

See CASES UNDER SMALL CAUSE COURT.
PRESIDENCY TOWNS—JURISDICTION—
MOVEABLE PROPERTY.

See THEFT . I. L. R., 10 Mad., 255
[I. L. R., 15 Bom., 702

Execution of warrant against—

See EXECUTION OF DECREE—MODE OF
EXECUTION GENERALLY AND POWERS
OF OFFICERS IN EXECUTION.
[5 B. L. R., Ap., 27: 13 W. R., 339

See SMALL CAUSE COURT, MOFUSSIL—
PRACTICE AND PROCEDURE—EXECU-
TION OF DECREE.

MOWRA FLOWERS.**Possession of, for distillation.**

See BOMBAY ABKARI ACT, 1878, s. 43, CL. f.
[I. L. R., 9 Bom., 556

MULTIFARIOUSNESS.

See ADMINISTRATION 15 B. L. R., 296
[I. L. R., 26 Calc., 891
3 C. W. N., 670

See APPELLATE COURT—OBJECTIONS TAKEN
FOR FIRST TIME ON APPEAL—SPECIAL
CASES—MISJOINDER.

See CASES UNDER JOINDER OF CAUSES
OF ACTION.

See MALABAR LAW—JOINT FAMILY.
[I. L. R., 15 Mad., 19

See RELINQUISHMENT OF, OR, OMISSION TO
SUE FOR, PORTION OF CLAIM.
[14 B. L. R., 418 note

See SPECIAL OR SECOND APPEAL—OTHER
ERRORS OF LAW OR PROCEDURE—MULTI-
FARIOUSNESS.

See SPECIFIC RELIEF ACT, s. 27.
[I. L. R., 1 All., 555

Dismissal of suit for —

See RES JUDICATA—JUDGMENTS ON PRE-
LIMINARY POINTS 13 B. L. R., Ap., 37

1. — Misjoinder of causes of
action—*Different causes of action against
different parties.*—When a plaint discloses different
causes of action against different parties, it is bad in
law, and the suit is not maintainable. SARAT SOON-
DERY DEBI v. SURJUKANT ACHARJI CHOWDHRY
[2 B. L. R., Ap., 53: 11 W. R., 397

MOTEE LALL v. BHOOP SINGH

[2 Ind. Jur., N. S., 245

S. C. MOTEE LALL v. RANEE . 8 W. R., 64

2. — *Causes of action
accruing against parties separately—Rejection of
plaint.*—A plaint against several defendants for
causes of action which have accrued against each of
them separately, and in respect of which they are not

MULTIFARIOUSNESS—continued.

jointly concerned, should be rejected. RAJARAM
TEWAR v. LUOHMUN PRASAD
[B. L. R., Sup. Vol., 731: 2 Ind Jur., N. S., 216
8 W. R., 15

PANCH COWREE MAHTOON v. KALEE CHURN
[9 W. R., 490

PEGOO JAN v. MULLICK WAIZOODDEEN
[18 W. R., 464

3. — *Separate claims
against separate parties.*—A suit against five defen-
dants including claims of the most miscellaneous
character against each defendant was dismissed by
the first Court on the ground of multifariousness.
The Subordinate Judge, on appeal, held that plaintiff
was in any case entitled to a decision on one of his
claims, and further held that the suit was not multi-
furious. Held on special appeal that the Court could
not select one claim on which to proceed when plaintiff
insisted on pressing all. Held also that the plaint
was multifarious; and the suit was properly dismissed
by the first Court. MANIRUDDIN AHMED v. RAM
CHAND . 2 B. L. R., A. C., 341

RAM DOYAL DUTT v. RAM DOOLAL DEB
[11 W. R., 273

4. — *Distinct causes of
action against separate defendants.*—It is illegal to
join different causes of action in the same suit against
different parties where each has a distinct and sepa-
rate interest, e.g., to a joint action for the price of
timber against defendants who purchased each one
pair of timber from the plaintiff separately from the
other. BAROO SIRCAR v. MASSIM MUNDUL
[21 W. R., 206

5. — *Suit to set aside
alienation by guardian to different alienees.*—
Several causes of action against different defendants
cannot be joined in one suit; therefore where a suit
was brought to set aside several transactions entered
into by a guardian with different persons, and no
relief was sought against the guardian, it was held
that the suit was bad by reason of misjoinder. MATA
PERSHAD v. BRUGMANEE
[1 N. W., 75: Ed. 1873, 128

See RUTTA BEEBEE v. DUMREE LAL
[2 N. W., 153

LOOLOO SINGH v. RAJENDUR LAHA
[8 W. R., 364

GOLAM MUSTAFA KHAN v. SHEO SOONDURRE
BURMONEE . 10 W. R., 187
HURRO MONEE DOSSEE v. ONOOKOOL CHUNDER
MOOKERJEE . 8 W. R., 461

6. — *Suit to set aside
separate alienations.*—A suit to set aside two sale
transactions of different dates and made to different
vendees will be dismissed for misjoinder. BANEE
KRISHNUN v. KOONDUN LALL . 2 N. W., 221

7. — *Joinder of causes
of action—Claim against different portions of prop-
erty.*—Where the plaintiff claims to recover posses-
sion of two distinct portions of a property from

MULTIFARIOUSNESS—continued.

the unity of his ground of action. **SAMI CHETTI v. AMMANI ACKY** 7 Mad., 280

times—Held that the better course was for the Court to have ordered, under s. 45 of the Code of Civil Procedure, separate trials to be held in respect of each alienation. **SUBHAMANYA v. SADASIYA**

[I. L. R., 8 Mad., 75]

24 ———— *Suit to recover property sold in execution of decree*—Certain pro-

defective by reason of misjoinder of causes of action. **Rajaram Tewari v. Ickman Prasad**, B. L. R., Sup. Vol., 173 8 W. R., 15, distinguished. **HABAND MOZOOMDAR v. PROSVNYO CHUDER BISWAS**

[I. L. R., 9 Calc., 763 12 C. L. R., 559]

decrees, plaintiff's case being that the properties were those of his judgment-debtor, and had passed, in fact, to his admitted representative—the other defendants being men of straw, fraudulently set up as ostensible purchasers.—Held that plaintiff had in reality but one cause of action against one party, that even if his suit had been multifarious, the defect or irregularity was not, under the circumstances, such as to warrant his being put out of Court. **WISS v. GREENE HOSEIN CHOWDHY** 13 W. R., 271

25 ———— *Suit to set aside*
brought to set aside the decree, a profits which they had misappropriated. **SHROOOR**

MULTIFARIOUSNESS—continued.

CHUNDER PAUL v. MOTHOO MOHUT PAUL CHOWDERY 4 W. R., 109

—Held that the suit was not to be dismissed. **IMRIT NATH JHA v. ROY DRUMPUT SING** 9 B. L. R., 241:18 W. R., 288

25 ———— *Suit for possession of different portions of property after ejectment*—In a suit to recover possession on the ground of dispossession by all the defendants in consequence

property under different titles could not make the suit bad for misjoinder. **ACKJOO BIBER v. LALLAH RAM CHUNDER LALL SAHAI** 23 W. R., 400

29 ———— *Suit for declaration that lands were wulf—Defendants holding under distinct titles*—In a suit instituted for a declaration of the Court, under s. 15 of Act VIII of 1859, that certain lands and premises in Calcutta were wulf lands, under a certain towsiatnamah executed by the ancestor of the plaintiff the authenticity of which was admitted, and that the defendants who were joined with, be ref proper towsiat pointed, might be taken as premises the causes of action were alleged to have arisen at various times within the last twelve years and were distinct as to the several defendants who held by different titles. On objection having been taken to the frame of the suit, the Court held that it was informal as there was a joinder in one

at Zulk Mossa v. A. A. [Bourke, O. C., 8: Cor., 94]

30. ———— *Held that there was no misjoinder of different causes in a suit including plaintiff's whole claim, where his cause of action was that the Revenue Commissioners had taken possession of his lands and given it in pottah to other people* **IN THE MATTER OF RUTENBERG DARS** [14 W. R., 361]

MULTIFARIOUSNESS—continued.

31. ————— *Suit to enforce the right of pre-emption—Civil Procedure Code, s. 45.*—Two co-sharers of a village, holding separate shares, sold their shares separately to the same person, upon which a third co-sharer of the village sued them and the vendor jointly to enforce his right of pre-emption in respect of sales. *Held* that the frame of the suit was bad by reason of misjoinder of defendants and causes of action, and the suit had been properly dismissed on that ground. *BHAGWATI PRASAD GIR v. BINDESHRI GIR* . . . **I. L. R., 6 All., 108**

32. ————— *Civil Procedure Code, 1877, s. 45—Pre-emption, Suit for—Irregularity not affecting merits or jurisdiction.*—The sons of *R* and of *K* and of *S* possessed proprietary rights in two mehals of a certain mouzal. *P* possessed proprietary rights in one of those mehals. In April 1879 the sons of *R* sold their proprietary rights in both mehals to *G*. In August 1879 the sons of *K* sold their proprietary rights in both mehals to *G*. Later in the same month the sons of *S* sold their proprietary rights in both mehals to *N*. *G* sued *N* to enforce a right of pre-emption in respect of the sale to the latter, and obtained a decree. *P* then sued to enforce a right of pre-emption in respect of the three sales mentioned above, so far as they related to the mehal of which he was a co-sharer, joining as defendants *G* and *N* and the vendors to them. *G* alone objected in the Court of first instance to the frame of the suit. That Court overruled the objection and gave *P* a decree. The lower Appellate Court reversed this decree on the ground of misjoinder. *Held* that in respect of *G* there was no misjoinder but that, in respect of the other defendants, there was misjoinder of both causes of action and parties. *KALLAN SINGH v. GUR DAXAL*

[**I. L. R., 4 All., 163**

33. ————— *Civil Procedure Code, ss. 28, 45.*—The judgment of the majority of the Full Bench in *Narsingh Dass v. Mungal Dubey*, **I. L. R., 5 All., 163**, except in its general observations as to the provisions of the Civil Procedure Code relating to joinder of parties and causes of action, proceeded upon and had reference to the special circumstances of the case and to the allegations made by the plaintiff in his plaint, and was not intended to be carried further. In a suit for possession of immoveable property, part of which had been usufructually mortgaged by defendant No. 1 to defendant No. 2, the plaintiff alleged that the first defendant had no title to make such a mortgage, while both defendants maintained such title. *Held* that, inasmuch as the title of defendant No. 2 was derived from defendant No. 1, and stood or fell with the failure or success of the plaintiff's claim against the latter, there were not two causes of action but one, namely, the infringement of the plaintiff's right by the defendant No. 1, and hence the suit was not bad for misjoinder of causes of action. *INDAR KUMAR v. GUR PRASAD* . . . **I. L. R., 11 All., 33**

34. ————— *Suit against several defendants for possession—Dispossession under forged document.*—A suit in which the plaintiff alleged that the defendants (including raiyats

MULTIFARIOUSNESS—continued.

against whom he had been unsuccessful in the Collector's Court) had, in combination, fraudulently availed themselves of a fabricated jamabandi paper as evidence to support certain mokurrari claims, and had thereby ousted him from the full enjoyment of his milkiat right, was held to be simple in its character and not multifarious. *GUJADHUR PERSHAD NARAIN SINGH v. SAHEB ROY* . . . **19 W. R., 203**

In the same case after remand the plaintiff, having failed to prove the allegation of forgery, claimed a declaration that the defendants had not a right to occupy the land at a fixed rent. *Held* that such a declaration could rightfully be asked for only in a separate suit against each separate occupant. *SAHEB ROY v. GUJADHUR PERSHAD NARAIN SINGH*

[**22 W. R., 221**

35. ————— *Joint trespassers.*—At an auction-sale for arrears of rent, on the 11th July 1885, plaintiffs purchased a tenure which, on the zamindar's serishtu, stood in the name of one Sheikh Miajan, and proceeded to take steps to obtain possession, but were resisted by the defendants. Against one of the defendants who claimed a particular portion of the lands under the tenure in question, they brought a suit in 1869; but this suit was finally dismissed in June 1876, on the ground that all the persons, who were claimants of any part of the lands, ought to have been joined as defendants. Accordingly a fresh suit was brought against all the claimants of the tenure. To this suit the defendants set up various and distinct defences, some alleging one defence and some another, and so on. The Subordinate Judge dismissed the suit for multifariousness. *Held* that there was no multifariousness, the plaintiffs' claim being to recover possession against persons who were alleged to be joint trespassers. *OMUR ALI v. WEXLAYET ALI* . . . **4 C. L. R., 455**

36. ————— *Civil Procedure Code, 1882, s. 28—Suit for declaratory decree—Specific Relief Act (I of 1877), s. 42.*—The plaintiffs, having obtained a decree for the possession of certain lands and having received formal possession thereof, brought a suit against eighty-six persons holding distinct and separate tenures in those lands, on the allegations that, "on the plaintiffs attempting to measure the lands and calling on the tenants to pay rent, ten of the defendants described as prodhans or headmen formed a combination and gained over the other defendants with a view to injure the plaintiffs; that through their help and endeavour the remaining defendants failed to recognize the plaintiffs as landlords, and declined to pay any rent or to allow them to measure the lands, driving away an Amcen who went to measure the lands on behalf of the plaintiffs, and thereby preventing the plaintiffs from exercising their proprietary rights; that the plaintiffs brought suits for rent against some of the defendants, and in those suits the defendants denied the plaintiffs' title as landlords, whereupon the plaintiffs, seeing the necessity of instituting a suit for declaring the defendants tenants of the land, withdrew the suits for rent." They stated their cause of action to be "the defendants' act of not recognizing us as their landlords and thereby preventing us exercising our proprietary

MULTIFARIOUSNESS—continued.

rights in respect of the land in suit, and not allowing us to make a measurement of that land and of the

[I. L. R., 13 Cal., 147]

37. — *"Multifarious"*
suit—Act X of 1877 (Civil Procedure Code) ss 28,
45—Defendant No 1, the tenant of certain land at

while this matter was pending the plaintiff endeavoured to obtain possession of the land but was resisted by defendant No 2. He thereupon instituted a charge of criminal trespass against the latter. This criminal proceeding was pending when on the 14th September 1874, defendant No 1 obtained a second order for defendant No. 2's ejectment. Under this order he obtained possession of the land and also of the crop planted by defendant No 2, which he sold to defendant No. 3 on the 22nd September 1874.

to him—viz (i) on the 12th November 1877, the date of the sale to him, (ii) on the 30th March 1878

Faali September 1879—September 1880) against
defendants Nos 1 and 4. Held by the Full Bench
(MAMMOON, J. dissenting) that the Court of first
instance had properly rejected the plaint, the suit

had
as to
DAS v. MAYAL DUBEY. I. L. R., 6 All., 163

38. — *Suit for possession and mesne profits—Civil Procedure Code, s 45*

MULTIFARIOUSNESS—continued.

claim for mesne profits. *FATIMA BINT E ABDOU MAJID* I. L. R., 14 All., 531

39. — *Detention in jail*
—*Suit by thirteen persons jointly for damages for detention—Plaint taken of the file—Separate causes of action—Practice—Act XIV of 1882, s 26.*—Thirteen persons who had been committed to jail under one warrant, and for the same offence, jointly sued the Superintendent of the Presidency Jail for their wrongful detention in jail after the term of imprisonment to which they had been sentenced had expired, claiming Rs 600 as damages. The defendant applied to have the plaint taken off the file on the ground that the plaintiffs had improperly joined in one suit several distinct and separate causes of action accruing to them as separate individuals. Held that the plaint must be taken off the file. *ALI SEBAIG v. BEADON* I. L. R., 11 Cal., 524

40. — *Suit on foreign judgment against members of a firm against some of whom only the judgment was obtained*—4 obtained

the foreign judgment in British India against B, C, D, E, F, G on the ground that all were members of one firm. Held that the suit would not lie against and that, up to the time of the foreign judgment, *LAKSHI*

[I. L. R., 6 Mad., 273]

41. — *Suit for share of zamindari cesses realized by auction sale in execution of decree—Joinder of causes of action—Joint decree holders* The plaintiff claimed from the defendants as joint decree holders a fourth share of the proceeds realized by auction sale through the Court of the Munsif of certain houses situate on land subject to a village custom whereby a proprietary due of the above amount was payable to the zamindar of the said land. Held by the Division Bench that the claim was not bad for joinder as the due was payable out of the sale proceeds taken out of Court by the decree-holders. *NAVEEN v. BOARD OF REVENUE* [I. L. R., 1 All., 444]

42. — *Suit for share of proceeds after saleable distribution*—In execution of a decree against six persons the plaintiffs had certain property brought to sale, the proceeds of which were brought into Court. The defendants, who held five separate decrees against some of the persons against whom in the plaintiffs' decree was obtained, applied to have the amount in Court rateably distributed, and this was done in accordance with an order of the Court, the proceeds being distributed in proportion to the amount of the decrees. In a suit brought against

MULTIFARIOUSNESS—continued.

the defendant, on the allegation that the plaintiffs were entitled to the whole of the proceeds; or in the alternative for distribution on a different principle.—*Held* that there was no misjoinder of causes of action by reason of all the defendants being included in one suit. *GOURI PRASAD KUNDU v. RAM RATAN SINGH* . . . I. L. R., 13 Cal., 159

43. ———— *Separate liability of defendants for rent.*—In a suit to recover rent from defendants, with whom engagements had been entered into separately, plaintiff obtained a decree making each of them liable for the whole sum claimed. *Held* that there was a misjoinder of the defendants, and that the decree was wrong in law; but if the first Court had made each defendant liable in proportion to the rent he had engaged to pay, the objection of misjoinder would not have been allowed to prevail. *JUMONA DASS v. POOKHUR SINGH* 22 W. R., 133

44. ———— *Suit for rent—Purchaser of portion of tenure—Civil Procedure Code, 1852, s. 23.*—Although a purchaser of a portion of a tenure is not personally liable for the rent falling due before the date of purchase, a suit for recovery of rent for the whole claim is not bad, if such purchaser is joined as one of the parties, regard being had to the provisions of s. 28, Civil Procedure Code. *JOGEMAYA DASSI v. GIRINDRA NATH MUKHERJEE* [4 C. W. N., 590

45. ———— *Suit for contribution.*—The plaintiff was compelled to pay the whole costs of a suit in which there was a misjoinder of causes of action, and which resulted in his and his co-defendants being charged with costs relating to causes of action with which they had no concern. The plaintiff sued, after deducting ₹71 as his own proper share to recover the balance from his co-defendants. The plea of misjoinder was allowed. *BHAI RAM v. HIDAYAT HOSSEIN* . . . 7 N. W., 82

46. ———— *Suit for contribution.*—In a suit against *A K* for contribution of moneys paid in which the present plaintiffs and defendants were jointly liable, and one of which decrees was founded on an ikrar executed by the parties to the present suit and by one *F*, not a party, who was expressly excluded from liability in the decree last mentioned, the Judge, considering that *F* was liable under the ikrar, but not liable under the bond on which the other decree was founded, decided that there were two distinct causes of action, and dismissed the suit. *Held* that the cause of action on which plaintiffs relied was simply the joint liability of the parties under the decree, and the suit was not multifarious. *MAHOMED MIRZA v. ABDUL KUREEM* . . . 25 W. R., 41

47. ———— *Parties—Suit for contribution.*—The purchaser of a share in a mortgaged estate, who has paid off the whole mortgage-debt in order to save the estate from foreclosure, can claim from each of the mortgagors a contribution proportionate to his interest in the property, but he cannot claim from the other mortgagors collectively the whole amount paid by him. *HIRA CHAND v. ABDAL* [I. L. R., 1 All., 455

MULTIFARIOUSNESS—continued.

See RUJAPUT RAI v. MAHOMED ALI KHAN

[5 N. W., 215

48. ———— *Joinder of parties—Contribution, Suit for.*—Where the owner of two villages sold under a decree obtained upon a mortgage, claims contribution proportionately against the owners of the other properties included in the mortgage, and does not claim from them all collectively one lump sum as contribution, he may join all the contributors in one suit, and is not bound to bring separate suits for contribution against the separate owners. *Hira Chand v. Abdal*, I. L. R., 1 All., 455, distinguished. *Rujaput Rai v. Mahomed Ali Khan*, 5 N. W., 215; *Tavasi Telavar v. Palani Andi Telavar*, 3 Mad., 187; *Khemda Debea v. Kamola Kant Bukhshi*, 10 B. L. R., 259 note; and *Eglinton v. Koylashnath Mozoomdar*, W. R., 1864, 303, referred to. He may also bring a single suit in respect of the two sales, and is not bound to bring a separate suit in respect of each sale. *IBN HUSAIN v. RAMDAI* . . . I. L. R., 12 All., 110

49. ———— *Institution of suit to redeem, pending a suit by plaintiff to establish his title as representative of the mortgagee.*—The ancestor of the defendants held as mortgagee a 10-biswa share of a mouzah; of this share 5 biswas were recovered and held by the plaintiffs as proprietors. Of the remaining 5 biswas, 3 biswas 6¼ biswansees belonged to *D* and 1 biswa 13¼ biswansees to *H*. These 5 biswas were in the defendants' possession. The plaintiffs sued to recover possession of them, alleging that the mortgage had been redeemed out of the usufruct, and that they had acquired *D*'s rights by auction-purchase in the year 1848, and *H*'s rights by private purchase from his sons in 1873. They also sued for mesne profits. The defendants pleaded that they held the 5 biswas in suit as proprietors, having acquired *D*'s rights by private purchase in 1847, and *H*'s rights similarly in 1851. They also pleaded that, inasmuch as the plaintiffs had brought a suit to establish the sale alleged to have been made to them by *H*'s sons, and that suit was still pending, the claim for possession of *H*'s share could not be maintained; and they lastly pleaded that, inasmuch as the plaintiffs admitted that the rights of *D* and *H* were acquired by them under separate sales, their claims to those rights could not be joined in one suit. The plaintiffs replied that, assuming the claim to *H*'s share could not be maintained on the basis of the alleged sale to them, they were nevertheless entitled to possession of *H*'s share in virtue of their right to *D*'s share, both shares having been jointly mortgaged. *Held* that the plaintiffs were entitled to ask in one suit for a determination of their claim to the possession of the shares, and to any surplus mesne profits which might be found due in respect of them on taking account, and that the pendency of the suit to establish their purchase of *H*'s share did not deprive them of the right to sue to recover possession from the mortgagees, although it might have been necessary to determine incidentally in the suit the question at issue in the suit respecting the purchase. *Held* also that, if the plaintiffs established their right to

MULTIFARIOUSNESS—continued.

injunction restraining her from making similar unlawful alienations in the future. *Held* that the suit as framed was not maintainable, inasmuch as it included within it several distinct causes of action which, under s. 45 of Act X of 1877, could not be joined together in the same suit. The course which should be adopted by a Court or Judge, where there has been such a misjoinder of causes of action, discussed. **KACHAR BHUJ VAJJA v. BAI RATHORE** . . . **I. L. R., 7 Bom., 289**

58. ————— *Properly situated in different districts—Civil Procedure Code, 1877, ss. 28, 31.*—*A, B, C, and D* were the proprietors of a 2 annas 13 gundas share in mouzah E, and also of a 2 annas 13 gundas share in mouzah F, both in the district of Bhaugulpore. On 19th September 1872 *A* mortgaged a 1 anna 4 pie share of E to *H*. On the 20th September 1872 *A, B, C, and D* mortgaged their shares in E and F, together with property in the district of Tirhoot, to the plaintiff. On the 21st March 1873 *A* mortgaged his share in E and F to *J*. On the 13th November 1874 *A* and *B* mortgaged their shares in E to *K*. On the 25th March 1874 *J* obtained a decree on his mortgage, and the interests of *A* and *B* were purchased on the 5th January 1875 by *L*. On the 17th April 1874 *M*, to whom the first mortgage had been assigned, obtained a decree and attached the property mortgaged. *L* objected that he had already purchased the interest of *A*, and on the objection being allowed, *M* brought a suit against *L* for a declaration of priority, and obtained a decree on the 9th August 1876. In execution of this decree, the property first mortgaged was sold on the 4th March 1878, and after satisfying the mortgage a surplus of Rs. 661 remained. After the institution of the first suit and before *L*'s purchase, the plaintiff instituted a suit up on his mortgage in the Tirhoot Court without having obtained leave to include that portion of the mortgaged property situate in the Bhaugulpore district. On the 17th July 1874 a decree was made in this suit. On the 17th January 1877 *K* obtained a decree on his mortgage, and the shares of *A* and *B* in E were sold and purchased on the 3rd September 1877 by *N*. The plaintiff had his decree transferred for execution to the Bhaugulpore Court, and he attached the surplus sale-proceeds and a 1 anna 9 gundas share in E. This attachment was withdrawn on the objection of *L*, who drew out the surplus sale-proceeds. The share purchased by *N* was also released from attachment. The plaintiff now sued *L, N*, and the mortgagors for a declaration that his decree of the 17th July 1874 affected the E property, to recover the surplus sale-proceeds from *L*, and in case the decree should not be valid to the extent mentioned, for a decree declaring his prior lien on the property in E. *Held* that the suit was not bad by reason of multifariousness. **BONGSEE SINGH v. SOODIST LALL** . . . **I. L. R., 7 Cal., 739; 10 C. L. R., 263**

59. ————— *Civil Procedure Code, s. 26.*—S. 26 of the Code of Civil Procedure does not authorize the joinder of plaintiffs with antagonistic claims arising out of distinct causes of

MULTIFARIOUSNESS—continued.

action. Where one of two widows of a deceased Hindu and her adopted son sued as co-plaintiffs claiming in the alternative either to recover the whole family estate for the latter, if the adoption was valid, or if the adoption was invalid, one-half of the estate for the former, — *Held* that the suit was bad for misjoinder. **LINGAMMAL v. CHINNA VENKATAMMAL** . . . **[I. L. R., 6 Mad., 239]**

60. ————— *Suit for maintenance and marriage expenses—Misjoinder of parties.*—A Hindu widow, with her two daughters as co-plaintiffs, sued the son of her deceased husband by another wife, alleging that he was in possession of his father's property, for maintenance, and for the marriage expenses of the daughters, both of whom were of marriageable age. The Court of first instance gave the plaintiffs a decree for a monthly allowance, and Rs. 10 to the widow as arrears of maintenance, and Rs. 1,000 for the marriage expenses of the daughters. *Held* that, inasmuch as the mother was the natural guardian of the two other plaintiffs, and it was proper for them to reside with and be provided for by her, and the common maintenance was, so to speak, a joint matter, the suit was not, at any rate at the stage of appeal, open to objection on the ground of misjoinder of parties and causes of action; nor, looking at the peculiar circumstances of this family, which made the mother the most natural and proper person to arrange the marriages of the two minor plaintiffs, was the prayer for marriage expenses improperly added. **TULSHA v. GOPAL RAI** . . . **[I. L. R., 6 All., 632]**

61. ————— *Joinder—Civil Procedure Code, 1877, ss. 28, 31, and 45—Alternative relief—Parties.*—In a suit instituted against six different parties, the plaintiff prayed for khas possession of a four-anna share in a certain lot, or in the alternative, for a decree for arrears of rent against the defendants or such of the defendants as should on inquiry appear to be respectively liable. It appeared that the plaintiff had been kept out of possession by one only of the six defendants, and that, if he was entitled to a decree for arrears of rent, another of the defendants was liable for a portion only of such arrears. *Held* that the suit was not improperly framed; that there was no objection to the prayer for alternative relief; and that the suit should not have been dismissed for misjoinder. **JANOKINATH MOOKERJEE v. RAM RUNJUN CHUCKERBUTTY** . . . **I. L. R., 4 Calc., 949**

62. ————— *Civil Procedure Code, 1882, ss. 32, 45, and 46—Adding parties—Striking off parties—Causes of action, Joinder or severance of—Non-joinder or misjoinder of parties—Practice—Procedure.*—*C* sued *P* to recover possession of certain lands. The plaintiff and defendant were members of the same family, and at the hearing of the suit the appellants, who were also members of the family, applied to be made parties, alleging that the suit was collusive, and that they were in possession of some of the lands which the plaintiff sought to recover, and wished to defend their possession. The Subordinate Judge granted their application, and made them co-defendants in the suit

MULTIFARIOUSNESS—continued

They filed written statements setting forth their right, and time was allowed in order that the plaintiff might put in a counter statement. Before the case came on again, the Subordinate Judge had been removed, and his successor was of opinion that the

the suit under s. 15 of the Civil Procedure Code

the several causes as between plaintiff and the several defendants cannot properly or conveniently be tried together, should deal with them separately as sub-suits under the title and number of the principal suit from which they spring. The dismissal of defendants added without objection, or the addition of whom has been submitted to, is not contemplated, and would tend to further needless expense. The

of the several causes of action, it would be an order preventing the disposal of them in the suit before the Court. S. 45 is meant to apply to cases in which questions arise as to the joinder or severance of several causes of action against the same defendant. For non-joinder or misjoinder of parties provision is made in s. 32 and the plaintiff

[I. L. R., 8 Bom., 618

63.

Civil Procedure

Code (1882), s. 278 283—Attachment of same property in execution of decrees obtained by different creditors—Claim made in one suit to attached property under s. 278—Order made under s. 281—Suit by claimant to establish right—All attaching creditors made defendants to suit—Civil Procedure Code (1882), s. 28—The first and second defendants obtained a decree in suit No. 1518 of 1897 against B, described as the owner of the Mahalan Milla, and attached property on the mill premises. Twelve other creditors also brought twelve

claim or order was made in the case of the other twelve suits. R. M. now sued in pursuance of the above order to recover his property, and he included as defendants not merely those (defendants Nos. 1

MULTIFARIOUSNESS—continued.

and 2) who had been plaintiffs in suit No. 1518 of 1897, but also those who had been plaintiffs in the twelve other suits, and who had attached the pro-

KAMA . . . I. L. R., 23 Bom., 280

64

Civil Procedure Code, s. 31—Suit for removal of trustees and for money decree—Suit by certain dikshadars or hereditary trustees of the Chitambaram temple against others of the dikshadars praying their removal from office and for a money-decree alleging that they had been jointly guilty of misconduct in respect of temple property in their custody and had obstructed the repair of certain shrines. Held that the suit was not bad for misjoinder of causes of action. NATASA + GANAPATI . . . I. L. R., 14 Mad., 103

65

Misjoinder of parties—Suit for partition and to set aside order disallowing objection to attachment—Civil Proce-

of a decree against B, a portion of the family property was attached. Thereupon A intervened and objected to the attachment so far as his own share was concerned. The objection was disallowed, and the pro-

family property. In this suit he implicated not only his co-sharers, B and C, but also D, the auction-purchaser and F, a mortgagee of B's share in the joint property. The Subordinate Judge, holding that the suit was bad for misjoinder of parties as well

not had either for misjoinder of parties or for misjoinder of causes of action. Treating the suit as one for partition, the auction purchaser D and the mort-

s. 33 of the Code of Civil Procedure did not prevent A from claiming partition in the present suit. Held further that, even if the Subordinate Judge's view were right that the two prayers could not be joined in one suit, his proper course was to have left it to the

MUNSIFF—continued.

See TRANSFER OF CIVIL CASES—GENERAL CASES . . . 13 W R., 389

[8 Mad., 18
25 W. R., 219
I. L. R., 8 Mad., 500
I. L. R., 13 All., 324

See CASES UNDER VALUATION OF SUIT—SUITS

[14 W. R., 375

3 ——— Appeal pending when Act XVI of 1868 came into operation—*Execution of decree—Act XVI of 1868 s. 12*—At the time of the passing of Act XVI of 1868, which abolished the

in the suit were pending in the original Court of trial within the meaning of s. 12, and the Sadler Munsiff's Court was the only Court which had jurisdiction to execute the decree. *GOBIND MOHAR MUKHOPADHYAY v. MUKHOPADHYAY* . . . 19 W. R., 414

jurisdiction to try such cases would be the Judge or Assistant Judge of the district in which the suit arose. *VALLABHAI JAGJIVAN c. WOODHOUSE* . . . 11 Bom., 144

5. ——— Suit for rent—*Dekkan Agriculturists' Act, XVII of 1879—Village Munsiff*—A Village Munsiff has no jurisdiction to try a suit for rent under the Dekkan Agriculturists' Relief Act, XVII of 1879. *VITHAL RAMCHANDRA c. GANGARAM VITHOR* . . . I. L. R., 5 Bom., 180

6 ——— Order enforcing award as to determination of rent—A Munsiff has no jurisdiction to entertain an application and pass an order on the enforcement of an arbitration award relating to the determination of rent. When a Mun-

MUNSIFF—continued.

sif acts without jurisdiction, the question may be the subject of an appeal to the Appellate Court of the district. *ALTAF HOSSAIN c. GHANI CHANDER ROY* . . . 15 W. R., 558

7. ——— Suit for dissolution of partnership—*Jurisdiction—Arbitration—Finality of decree in accordance with award*—A suit for dissolution of a partnership, taking the accounts of the firm, and a declaration of the plaintiff's right to a certain share in the debts due to the firm, was, with reference to the value of the subject-matter of the suit instituted in the Court of a Munsiff. The matters in difference in the suit were eventually referred to arbitrators under Ch. XXXVII of the Code of Civil Procedure, and an award was made declaring the plaintiff entitled to recover a certain sum from the defendant. Judgment and a decree were given in accordance with the award. Held that, the award notwithstanding, the question whether the suit was cognizable in the Munsiff's Court was ascertainable. *Bhagiroth v. Ramchulam*, I. L. R., 4 All., 253, referred to. *KALIAN DAS c. GANGA SAHAI*

[I. L. R., 5 All., 500

8 ——— District Munsiff—*Village suit*—*attachment for breach of duty by karnam—Fine*—A District Munsiff's Court has not authority to inflict fines on karnams of villages which are under attachment by that Court for breach of duty on the karnam's part. *RAMAKRISHNA c. RAMACHANDRA*

[I. L. R., 3 Mad., 403

9 ——— Power to take voluntary depositions—*Applicant to restore appeal*—A Munsiff has no power to take voluntary depositions of a party to show his illness where he wishes for restoration of an appeal in the High Court which has been struck off for his absence from that cause. *IN THE MATTER OF THE PETITION OF KALAO KHOND KAE* . . . 7 W. R., 47

10 ——— Power to transfer suit—

Court, and the District Judge should transfer the case for trial to another Village Munsiff. *IASHAK MAHA c. BALI* . . . I. L. R., 8 Mad., 500

[I. L. R., 7 Mad., 220

12. ——— Power of Village Munsiff to administer oath to witness—*Mal. Reg. IV of 1816—Criminal Procedure Code, s. 193—Question for prosecution of witness for perjury*—A Village Munsiff—V was tried and convicted under s. 193 of the Penal Code for giving false evidence

MUNSIFF—continued.

before the Court of a Village Munsif in a suit in which I was defendant. The Village Munsif sanctioned the prosecution of I under s. 195 of the Code of Criminal Procedure. On appeal, the Sessions Judge acquitted I on the ground that a Village Munsif had no power to administer an oath to I (the case not being one in which either party was willing to allow the case to be settled by the oath of the other), and because s. 195 of the Code of Criminal Procedure did not apply. *Held* that both objections to the conviction were bad in law. *QUEEN-EMPEROR v. VISAKAYA*. I. L. R., 11 Mad., 375.

13. **Village Munsifs—Criminal Procedure Code, ss. 1, 450, 452—Contempt of Court.**—Ss. 4-0-192 of the Code of Criminal Procedure do not apply to Village Munsifs. *QUEEN-EMPEROR v. VISAKATASAMI*. I. L. R., 15 Mad., 131.

14. **Madras Village Courts Act (Mad. Act 1 of 1859), s. 13 (3)—“Land” Meaning of—Suit for rent of house.**—In Madras Act 1 of 1859, s. 13, proviso 3, the word “Land” includes land covered by a house, and consequently a suit for house-rent, unless due under a written contract signed by the defendant, is not cognizable in a Village Munsif’s Court. *NARAYANAMMA v. KANAKAMMA*. I. L. R., 20 Mad., 21.

15. **Village Munsif’s Court—Succession Certificate Act 1911 of 1889.**—The provisions of the Succession Certificate Act apply to suits in a Village Munsif’s Court. *RASIM AMMAL v. OLAGA PADAYACHI*. [I. L. R., 21 Mad., 115]

16. **Suit for share of annual allowance—Question of title.**—In an action brought to recover a third share of arrears of varshasan or annual allowance paid by the Guikwar of Baroda to the defendant, and in which the plaintiff alleged that he was entitled to a third share.—*Held* that such an action can be maintained in a Munsif’s Court, although it may be necessary to determine the title of the plaintiff to share in such varshasan. *RATAN SHANKAR REVASHANKAR v. GULASHANKAR LALSHANKAR*. 4 Bom., A. C., 173.

17. **Suit for money charged on immoveable property.**—*Held* that a suit for money charged on immoveable property in which the money did not exceed Rs. 1,000, although the value of the immoveable property did exceed that sum, was cognizable by a Munsif, provided the property was situate within the local limits of his jurisdiction. *JANKI DAS v. BADRI NATH*. [I. L. R., 2 All., 698]

18. **Suit on mortgage—Malikana—bond mortgaging sayar compensation—Civil Procedure Interest in immoveable property—Mad. Reg. XXVII of 1793.**—A mortgagedat Calcutta to B his sayar compensation payable at the General Treasury at Calcutta in respect of a certain hit within the Diamond Harbour sub-division. In a suit to enforce the mortgage-bond in the Court of the Munsif of Diamond Harbour, *Held* that sayar compensation did not partake of the nature of malikana, that it was not immoveable

MUNSIFF—continued.

property or any interest in immoveable property within the meaning of s. 16 of the Code of Civil Procedure, and that therefore the Munsif had no jurisdiction to entertain the suit. *Bungsho Dhar Biswas v. Mudhoo Mohuldas*, 21 W. R., 333, distinguished. *SURENDRO PRASAD BHUTTACHARJEE v. KIDARI NATH BHATTACHARJEE*. I. L. R., 19 Cal., 8.

19. **Suit for redemption of usufructuary mortgage—Question of title.**—Where the question in dispute in a suit for redemption of a usufructuary mortgage is not only whether the property has been redeemed out of the usufruct, but whether the property and the right to redeem belong to the plaintiff, and the value of the property exceeds Rs. 1,000, such suit is not cognizable by a Munsif. *KAMAR DAS v. NAWAL SINGH*. [I. L. R., 1 All., 620.]

20. **Mortgage set up by defendant exceeding limit of jurisdiction—Court Fees Act, s. 7, cl. 9—Ejectment—Madras Civil Courts Act (III of 1873).**—In a suit brought in a District Munsif’s Court to recover several parcels of land from the defendant, plaintiff alleged that defendant held a valid mortgage of Rs. 205 on two parcels which he offered to redeem. As to the other parcels, he alleged that, if any charges had been created in defendant’s favour over them by his predecessor in title, such charges were invalid. The suit, as valued by the plaintiff, was within the pecuniary limit of the Munsif’s jurisdiction. Defendant pleaded that he held a mortgage for Rs. 3,000 over the land, and therefore the Munsif’s Court had no jurisdiction to try the suit. The Munsif tried the question of the validity of the defendant’s mortgage, and decreed possession to plaintiff on payment of Rs. 903 due on account of mortgages and Rs. 647-11-9 on account of improvements. On appeal, the District Judge held that the Munsif had no jurisdiction, reversed the decree, and ordered the plaintiff to be returned to be presented in the proper Court. *Held* that the Munsif’s Court had jurisdiction. *CHANDU v. KOMBI*. [I. L. R., 9 Mad., 208]

21. **Suit regarding minors—Act IX of 1861.**—Suits regarding minors are cognizable by principal Civil Courts of districts. Munsifs have no jurisdiction to try them. *KRISHO CHUDDER ACHARJEE v. KASHEE THAKOORANEE* 23 W. R., 340. *HARASUNDARI BAISTABI v. JAYADURGA BAISTABI* [4 B. L. R., Ap., 38: 13 W. R., 112]

22. **Act IX of 1861—Parent and child—Civil Procedure Code, ss. 11, 15—Parent and child—Suit for recovery of minor by parent.**—Act IX of 1861 does not debar a District Munsif’s Court from entertaining a suit by a Hindu father to recover possession of his minor son alleged to be illegally detained by the defendant. *KRISHNA v. READE*. [I. L. R., 9 Mad., 31.]

23. **Suit for dismissal of a zamindari karnam—Mad. Reg. XXV of 1802, s. 11—Mad. Reg. XXIX of 1802, ss. 5, 7, 10.**—A suit by a zamindar for the dismissal of a zamindari karnam cannot be entertained by a

MUNSIFF—continued.

District Munsif. The Subordinate Court, and the District Court where there is no subordinate Court, is the tribunal that has taken the place of the Court of Adawlut of 1802. *VENKATANARAYANA v. SURYANARAYANA* . . . I. L. R., 12 Mad., 188

24. — Suit for office of karnam—*Mad. Reg. XXIX of 1802, s. 7—District Court, Jurisdiction of*—A suit to establish plaintiff's right to, and to recover possession of, the office of karnam, and for the restoration of the inam lands, and for damages, was brought in the Court of the District Munsif. *Held* that it was properly so brought. *JAGANNATHA PILLAI v. SUBBARAYA PILLAI* . . . I. L. R., 22 Mad., 340

claimed being less than Rs. 2,500, while the value of the whole estate exceeded that amount. *Held* that the suit was within the jurisdiction of a District Munsif. *KHANDA BIDI v. SYED ABRA*

[I. L. R., 11 Mad., 140]

26. — Suit for partition and meane profits—*Madras Civil Courts Act, 1873—Civil Procedure Code, s. 844*—N sued S and others for partition of a share of certain land, and claimed meane profits from other defendants who were tenants of the land. S obtained a decree by consent for her share, and a sum of 99 rupees was decreed to her against the tenants for meane profits. Against this decree the tenants appealed. The Subordinate Judge, finding that the subject matter of the suit, the land of which partition was claimed, exceeded the jurisdiction of the Munsif, reversed the decree of the Munsif, and directed the plaint to be returned for presentation in the proper Court. It was contended, on appeal to the High Court, that the Subordinate Judge could not set aside the decree against the tenants for meane profits. *Held* that, as the Munsif's Court had no jurisdiction to entertain the suit for partition, it could make no decree for meane profits. *SAGANNA v. SUBBA* . . . I. L. R., 11 Mad., 197

chased by the present plaintiff. The plaintiff now sued for the appointment and possession of the share to which he was entitled, and stated the value of the suit to be the value of the share claimed by him, viz., Rs. 370, and not that of the entire property. The defendants were the mortgagors and the other persons interested in the land, their respective shares not having been ascertained and demarcated. *Held* that

MUNSIFF—continued.

the suit was within the jurisdiction of a District Munsif. *GHAKRAPATI ASARI v. NARASINGA RAU*

[I. L. R., 10 Mad., 50]

28. — Remedy by ordinary suit barred—*Madras Forest Act, 1852, s. 10—Procedure*—Where by an Act of the Legislature powers are given to any person for a public purpose from which an individual may receive injury, if the mode of redressing the injury is pointed out by the statute,

Judge under s. 1 of the Madras Forest Act, 1852, and to recover certain land, a claim to which had been rejected under the said section. *Held* that the Munsif had no jurisdiction to entertain the suit. *RAMACHANDRA v. SECRETARY OF STATE FOR INDIA*

[I. L. R., 12 Mad., 105]

29. — *Mad. Act IV of 1863—Small Cause Court Judge—Act XI of 1865*—A District Munsif is a Small Cause Court Judge under Madras Act IV of 1863 within Act XI of 1865. *HARAJAR KUMARA VENKATA PERUMAL RAJ v. KANNIAFFAH / AMINDAR OF KARVATINUGGAR v. KANNIAFFAH*

[4 Mad., 140]

30. — *Madras Act IV of 1863* did not take away the former jurisdiction given to the District Munsif in respect of causes of action arising within the limits of his jurisdiction. *MAGAM THIMMAI v. TANGATTUR KANDAPPA*

[3 Mad., 63]

31. — *Suit for money paid to use of undivided brother.*—Plaintiff sued for Rs. 12-2-3, money paid for the use of defendant, his undivided brother. The defence was that plaintiff held family property, defendant's share of which exceeded in value the debt sued for, as also the amount for which a suit would lie before a Munsif under Act IV of 1863. *Held* that, provided it was proved in evidence that the money was paid out of plaintiff's self-acquired property, the suit was cognizable by the Munsif under Act IV of 1863. *Held* also that the share of the defendant being both in nature and amount beyond the District Munsif's small Cause jurisdiction, it was not available as a defence, even if it formed a fit object of set-off. *KATTAPERUMAL PILLAI v. PANCHANADAM PILLAI*

[3 Mad., 339]

32. — Suit against Government—*Small Cause Court Act, XI of 1865, s. 2*—A Munsif has jurisdiction to try a suit against Government which, but for s. 2, Act XI of 1865 would be cognizable by a Court of Small Causes. *KOMALOOTHERY SRIKISHN v. COLLECTOR OF MIDNAPORE*

[11 W. R., 233]

33. — Suit cognizable in Small Cause Court—*Defendant residing out of jurisdiction*—A Munsif has no jurisdiction as a Small Cause Court to take cognizance of a suit against defendants not resident within his jurisdiction. *ADOTTINGERS* . . . 3 Mad., Ap., 24

MUNSIF—continued.

Correcting as to this point *MAGAM TIMMAYA v. TANGATTUR KANDAPPA* 2 Mad., 82

34. ——— Suit cognizable in Small Cause Court, but erroneously dismissed there.—A plaint was rejected by a Court of Small Causes on the ground that that Court had no jurisdiction. It was then filed in the Court of a District Munsif, who decreed for the plaintiff. On appeal to the Principal Sudder Ameen, it was objected that the Munsif had no jurisdiction, as the suit was one cognizable by the Small Cause Court. *Held* (the Court having decided that the Small Cause Court had jurisdiction) that the District Munsif's Court had no jurisdiction; that the erroneous dismissal of a former suit for the same cause of action by a Small Cause Court did not warrant the institution of the suit in the District Munsif's Court; and that the Principal Sudder Ameen rightly concluded that the suit ought to be dismissed. *PANAPPA MUDALI v. SRINIVASA MUDALI* 3 Mad., 86

35. ——— Jurisdiction where Small Cause Court exists—*Civil Procedure Code, 1859, s. 6.*—Where a Munsif is vested under Act VI of 1871 with powers up to ₹50 in a place in which there is a Court of Small Causes constituted under Act XI of 1865 with jurisdiction extending up to ₹500, a suit of the nature cognizable by Small Cause Courts, being in amount or value below ₹50, ought, by the operation of Act VIII of 1859, s. 6, to be instituted in the Court of the Munsif exercising Small Cause Court powers. *DWARKANATH DUTT v. VIATHREE HAWALDAR. CHUNDOO VISTEE v. SODAGUR VISTEE* 22 W. R., 457

36. ——— Power of Munsif sitting as Small Cause Court to transfer case to Munsif's Court.—When a District Munsif has jurisdiction to try a suit as a Small Cause Court Judge, he cannot transfer it to the District Munsif's Court on any ground of expediency. *BODI RAMAYYA v. PERMA JANAKIRAMUDU* 5 Mad., 172

37. ——— Jurisdiction of Small Cause Court to return a plaint for presentation to an ordinary Civil Court when the title of the plaintiff is questioned—*Provincial Small Cause Courts Act (IX of 1887), s. 23—Suit for damages for use and occupation—Code of Civil Procedure (1882), ss. 646A and 646B.*—In a suit for damages on account of use and occupation of land brought in a Court of Small Causes, exception was taken to the plaintiff's title. The plaint was returned by the Judge, under s. 23 of the Provincial Small Cause Courts Act (IX of 1887), for presentation in the ordinary Civil Court, and it having been presented to the Munsif, he tried the suit, and passed a decree in favour of the plaintiff. On appeal, the Subordinate Judge reversed that decree, holding that the Munsif had no jurisdiction to try the suit. *Held* that, under s. 23 of the Provincial Small Cause Courts Act, the order of the Small Cause Court Judge was regularly made, and the Munsif had therefore jurisdiction to entertain the plaint. *Semble*—Having regard to the provisions of ss. 646A and 646B of the Code of Civil Procedure, it is doubtful whether the

MUNSIF—continued.

Appellate Court would have been right in dismissing the suit for want of jurisdiction, even supposing that the order made under s. 23 of the Provincial Small Cause Courts Act had not expressly conferred jurisdiction upon the Munsif. *MAHAMAYA DASYA v. NITYA HARI DAS BAIKAGI* . I. L. R., 23 Cal., 425

38. ——— Suit which may be filed in more than one of several Courts—*Civil Procedure Code (1882), s. 17—Provincial Small Cause Courts Act (IX of 1887), s. 16—Choice of forum.*—Where a suit may be filed in more than one of several Courts, it is a general principle of law that the plaintiff may select the forum in which to bring the suit. Where a plaintiff sued in a District Munsif's Court, having jurisdiction at the place where the money due under a contract was to be paid, there being no Small Cause Court having jurisdiction at such place, *Held* that the jurisdiction of the District Munsif was not ousted by the fact that there was in existence at the date of suit a Small Cause Court having jurisdiction at the place where the contract was made. *RATNAGIRI PILLAI v. VAVA RAVUTHAN* [I. L. R., 19 Mad., 477]

39. ——— Jurisdiction to execute decree passed by him in Small Cause Court case after his powers as Small Cause Court Judge have been withdrawn—*Civil Procedure Code, s. 649—Provincial Small Cause Courts Act (IX of 1887), s. 35 (1)—Madras Civil Courts Act (Mad. Act III of 1873), s. 29.*—Under Madras Act III of 1873, s. 28, a Munsif was invested with the powers of a Small Cause Court's Judge for the trial of suits cognizable by such Court up to ₹200 in value. Subsequent to decree, but prior to execution, his powers as Small Cause Court's Judge were withdrawn by notification in the Gazette. *Held* that application for execution must be made to the Court in which the Small Cause Court's jurisdiction vested at the date of the application. *ZAMINDAR OF VALUR AND GUDUR v. ADINABAYUDU* [I. L. R., 19 Mad., 445]

40. ——— Interpleader suit — *Civil Procedure Code (1882), ss. 470 and 622—Claim for compensation awarded under Land Acquisition Act — Provincial Small Cause Court Act (IX of 1887) — Superintendence of High Court.*—Land having been compulsorily acquired under the Land Acquisition Act for the purpose of the East Coast Railway, the compensation was fixed at ₹468. A conflict having arisen as to the right to receive the compensation, and the District Court having declined to determine it under the Land Acquisition Act, s. 15, an interpleader suit was instituted on behalf of the Secretary of State in the Court of the District Munsif. The decision of the District Munsif having been confirmed on appeal, the unsuccessful claimant preferred a petition to the High Court under s. 622, Civil Procedure Code. *Held* that the interpleader suit was not within the jurisdiction of a Provincial Small Cause Court, and was rightly brought on the ordinary side of the District Munsif's Court, and consequently where the petitioner's remedy was by way of second

MUNSHI—continued.

appeal, the petition for revision was not admissible.
TRIPATHI RAJ v. VISSAM RAJ

[I. L. R., 20 Mad., 185]

41. — Suit brought for amount in excess of Court's jurisdiction—*Suit to declare land liable to be sold in execution of decree—Civil Procedure Code, s. 373—Withdrawal of part of claim*—In a suit brought in a District Munsif's Court to declare certain land liable to be sold in execution of a decree for more than Rs 500, the defendants pleaded that the Court had no jurisdiction. The Munsif allowed the plaintiff to amend the plaint to execute Rs 500.

Held on appeal to the High Court that the claim was not one which could be amended so as to bring the suit within the pecuniary jurisdiction of the Munsif.

ANANDI RAJ v. RAMA KRISHN

[I. L. R., 10 Mad., 152]

42. — Decree passed in a restored suit pending appeal against order of restoration—*Civil Procedure Code, ss. 98, 99*—A suit was filed in a Munsif's Court, but neither party appeared for the hearing, and the suit was dismissed. The Munsif subsequently on review made an order restoring the suit and executing the decree.

was not passed without jurisdiction. **ALWAR v. BASHAMMAL**

[I. L. R., 10 Mad., 290]

to entertain the suit, and that the plaint should be returned for presentation in the proper Court. **BEHRA v. SETHA**

[I. L. R., 10 Mad., 371]

44. — Suit for declaration that

party determined the jurisdiction, that it was immaterial that the amount of the decree was higher than the limit of the Munsif's jurisdiction, and that

MUNSHI—continued.

the case was therefore triable by the Munsif. **Gulzari Lal v. Jadawa Rai, I. L. R., 2 All., 799**, distinguished. **DEBDA PRASAD v. RACILA KRAM**

[I. L. R., 9 All., 140]

45. — Attached property, Suit to establish right to *Reclaim* Courts Act subject-matter of suit of Munsif has a 2/3 of the whether a property which has been attached in execution is liable to pay the claim of the creditor, the value of

pute, and which the creditor would recover if successful, viz., the amount due to him and not the value of the property attached, unless the two amounts happen to be identical. **Janki Doss v. Badri Nath, I. L. R., 3 All., 698** **Gulzari Lal v. Jadawa Rai, I. L. R., 2 All., 799** **Krishna Chariar v. Srinivasa Ayyangar, I. L. R., 4 Mad., 339**, and **Dayachand Nemchand v. Hemchand Dhirendrahar, I. L. R., 4 Bom., 315**, follow. **Modur v. KOLH v. RAHMAT CHANDRA ROY**

[I. L. R., 15 Calc., 104]

46. — Application to be declared insolvent made to Court to which decree was transferred for execution—*Civil Procedure Code, ss. 223, 239, 311, 360*—Where a decree had been transferred for execution from the Court of the District Munsif of E to that of the District

[I. L. R., 11 Mad., 301]

47. — Decree containing order for ascertainment of mesne profits from date of suit to date of recovery of possession—*Effect on jurisdiction of such mesne profits added to amount of decree exceeding jurisdiction of the Munsif—Valuation of suit*—A suit, valued at Rs 500, was brought in the Munsif's Court to recover possession of certain lands on the ground of illegal dispossession. No mesne profits up to the date of suit were claimed, but the plaintiff prayed that such mesne profits from date of suit to recovery of possession, as might be ascertained in execution of decree, should be awarded to the plaintiff. The Munsif gave a decree in accordance with the prayer of the plaintiff. The plaintiff then asked that the mesne profits might be assessed, and in his petition he roughly estimated them at Rs 225, and thereupon it was held both by the Munsif, and on appeal by the District Judge, that the Munsif had no jurisdiction, as he could not give a decree for more than Rs 500. *Held* on appeal in the High Court that the Munsif had jurisdiction to ascertain the mesne profits, and to give effect to

MUNSHI—concluded.

the order made in his decree in the suit, notwithstanding that the amount of such means profits, when added to the value of the suit, might come to a sum in excess of the pecuniary jurisdiction of his Court. *RAMESWAR MAHTON v. DILU MAHTON*
[I. L. R., 21 Cal., 550]

48. **Power of District Munsif on revision—Madras Village Courts' Act (Mad. Act I of 1889), s. 73.**—A District Munsif has no jurisdiction to reverse the decree of a Village Munsif on a question of evidence; he can only revise the proceedings of village Courts on the grounds mentioned in s. 73 of the Village Courts Act. *GIDDAYYA v. JAGANNATHA RAO*
I. L. R., 21 Mad., 363

MURDER.

See CASES UNDER ABETMENT—MURDER.
See ATTEMPT TO COMMIT OFFENCE.

[4 Bom., Cr., 17
8 Bom., Cr., 164
I. L. R., 15 Bom., 184
I. L. R., 14 All., 38
I. L. R., 20 All., 143]

See CRIMINAL PROCEDURE CODES, s. 376
(1872, s. 288). I. L. R., 1 Bom., 639

See CASES UNDER CULPABLE HOMICIDE.

See DACOITY. I. L. R., 18 All., 437
[I. L. R., 17 All., 86]

See EVIDENCE—CRIMINAL CASES—CONSIDERATION OF, AND MODE OF DEALING WITH, EVIDENCE.
[I. L. R., 13 Mad., 428]

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—MURDER.
[I. L. R., 2 All., 218
I. L. R., 10 Bom., 258, 263]

See CASES UNDER SENTENCE—CAPITAL SENTENCE.

See CASES UNDER UNLAWFUL ASSEMBLY.
See VERDICT OF JURY—GENERAL CASES.
[1 W. R., Cr., 50
21 W. R., Cr., 1
I. L. R., 20 Bom., 215]

Abetment of—

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—ABETMENT.
[I. L. R., 19 Bom., 105]

1. **Motive, Proof of.**—The evidence as to the motives with which a prisoner commits an offence should be of the strictest kind. *QUEEN v. ZAHIR*
10 W. R., Cr., 11

2. **Motive or ill-will, Proof of.**—Proof of motive or previous ill-will is not necessary to sustain a conviction for murder in a case where a person is wholly and barbarously put to death. *QUEEN v. JAICHAND MUNDLE*
7 W. R., Cr., 60

MURDER—continued.

3. **Absence of premeditation—Culpable homicide.**—The absence of premeditation will not reduce a crime from murder to culpable homicide not amounting to murder. *QUEEN v. MAHOMED ELIM*
3 W. R., Cr., 46

4. **Suffering death by consent—Penal Code, s. 300, except 5.**—In a case of a wife consenting, while in violent grief for the loss of her child, to suffer death at the hands of her husband, held that evidence of consent which would be sufficient in a civil transaction must be equally sufficient in exculpation of a prisoner's guilt. *QUEEN v. ANANTO RUMNAGAT*
8 W. R., Cr., 1

5. **Grievous hurt, Murder arising from—Inseparable acts.**—In order to convict a person of murder arising out of grievous hurt, it is indispensable that the death should be clearly and directly connected with the act of violence. *QUEEN v. MAHOMED HOSSEIN*
[W. R., 1884, Cr., 31]

6. **Act by which death is caused occurring in dacoity—Penal Code, s. 300.**—If the act by which death is caused does not in itself constitute the crime of murder, it does not constitute murder because it is coupled with dacoity. *QUEEN v. RAM COOMAR CHUNG*
1 Ind. Jur., O. S., 108

7. **Murder in committing dacoity.**—When murder is committed in the commission of a dacoity, every one of the persons concerned in the dacoity is liable to be punished with death. *QUEEN v. RUCHEE AHEN*
2 W. R., Cr., 39

8. **Culpable homicide—Distinction between it and murder.**—Culpable homicide and murder distinguished. *QUEEN v. GORACHAND GOR*
[B. L. R., Sup. Vol., 443; 5 W. R., Cr., 45
1 Ind. Jur., N. S., 177]

9. **Grave and sudden provocation—Actual intention to kill.**—Under the Penal Code, no constructive but an actual intention to cause death is required to constitute murder. Thus, when a boy of fifteen years old, in the heat of discovering the deceased in the act of adultery with the wife of a near relative, and, without the use of any weapon, joined that relative in committing an assault upon the deceased which caused his death, the offence committed was held to have been culpable homicide not amounting to murder. *QUEEN v. GOREEBOOLAH*
[5 W. R., Cr., 42]

10. **Grievous hurt.**—A man who, by a single blow with a deadly weapon, killed another man who, at dead of night, was entering his room for the purpose of having criminal intercourse with his wife, was held guilty not of murder, but of causing grievous hurt on a grave and sudden provocation. *QUEEN v. CHULLUNDEE PORAMANICK*
[3 W. R., Cr., 55]

11. **Culpable homicide not amounting to murder is when a man kills another being deprived of self-control by reason of grave and sudden provocation. But when the act is done after the first excitement had.**

MURDER—continued

passed away, and there was time to cool, it is murder.

QUEEN v. YASIN SHAIKH

[4 B L R., A. Cr., 6: 12 W. R., Cr., 68

12. ——— *Culpable homicide not amounting to murder—Penal Code, ss 300, except 1, 302, 304*—Upon the trial of a person charged with the murder of his wife, it was proved that the accused had entertained well founded suspicions that his wife had formed a criminal intimacy with

accused constituted the crime of murder, the facts not showing "grave and sudden provocation" within the meaning of s 300, except 1, of the Penal Code, so as to reduce the offence to culpable homicide not amounting to murder. *Queen-Empress v. Damarus, Weekly Notes, All., 1885, p 197, distinguished by STRAIGHT, Off. C J. QUEEN-EMPRESS v. MOHAY*

[L L R., 8 All., 622

13. ——— *Culpable homicide*

reducing the offence to one not amounting to murder, and it is the duty of the Court to consider, in the first place, whether the element or elements which constitute the offence of murder, as defined in s 300, exist. *PASSETT GOKE v. RAM BHAIAS QJHA*

[I. C. W. N., 545

14. ——— *Culpable homicide not amounting to murder—Penal Code, ss 300 except 1, 302, 304*—An accused person was convicted of culpable homicide not amounting to murder in respect of the widow of his cousin, who lived with him. The evidence showed that the accused was seen to follow the deceased for a considerable distance with a gandasa or chopper, under circumstances which indicated a belief on his part that

tion. *Queen-Empress v. Damarus, Weekly Notes, All., 1885, p. 197, and Queen-Empress v. Mahan, J. L. R., 8 All., 622, referred to. QUEEN-EMPRESS v. LOCHAY*

[L L R., 8 All., 635

15. ——— *Absence of intention to kill*—*Indication of intention by acts*—It is not murder if a person kills another without intending to take his life, and if the acts done were not such as conclusively indicated an intention to cause such injury as was likely to cause death. *QUEEN v. MOHAY*

[5 W. R., Cr., 41

MURDER—continued.

murder of a QUEEN v. PHOLOVIE ABUM
[8 W. R., Cr., 78

—Held that, in the absence of proof that the prisoner had the common intent on to inflict injury likely to cause death, they could not be convicted of murder. *QUEEN-EMPRESS v. DUMA BAIDYA*

[L L R., 19 Mad., 483

18. ——— *Exposure of child—Penal Code, s. 317—Femicide cause of death*—Held that where, from the circumstances, it appeared that a child had been exposed by the prisoner died but that death was not caused except very remotely by the exposure, the prisoner, though guilty under s. 317 of the Penal Code could not be convicted of murder. That section contemplates cases in which death is caused from cold or some other result of exposure. *QUEEN v. ANODALUX FAKIER* 10 W. R., Cr., 62

19. ——— *Neglect of child—Culpable homicide—Death from starvation*—Where it appeared that the prisoner, a Rajput, had allowed a female child, after the mother's death to gradually languish away and die from want of proper sustenance, and had persistently ignored the wants of the child, although repeatedly warned of its state and the consequences of his neglect of it and there was nothing to show that the prisoner was not in a position to support the child,—Held that the offence which the prisoner committed was murder, and not simply culpable homicide not amounting to murder. *QUEEN v. GAYDA BINON* 5 N. W., 44

20. ——— *Exercise of right of private defence on thief*—The prisoner detected a thief half starved and a woman stealing their rice, and so used their right of private defence that she died from the injuries they inflicted. The prisoners were held guilty by the majority of the Court of murder (*disentitled CAMPBELL J.*) *QUEEN v. GOKUL BOWRIE* 5 W. R., Cr., 33

21. ——— *Right of private defence—House-breaking by night*—Prisoner found deceased in act of house-breaking by night in his house, and killed him with a kodah which he had called for, as he admitted, for that purpose. He was convicted of murder, and sentenced to death by the Sessions Judge. The sentence being referred to the High Court for confirmation, it was held that the prisoner had been legally convicted of murder, that he had intentionally done to the deceased more harm than was necessary for any purpose of defence, and that he was whilst deprived of power of self-control. That the sentence was mitigated to transportation for life, that which, it was held, no less sentence could be legally

MURDER—continued.

passed. The Judge, however, in a letter to Government, suggested the mitigation of the punishment, which was accordingly reduced to imprisonment for six months. *REG. v. DURWAN GEEB*

[1 Ind. Jur., N. S., 253; 5 W. R., Cr., 73

See *QUEEN v. FUKERA CHAMAR*

[8 W. R., Cr., 50

22. ——— Death from blow in a fight.—A conviction for murder was held to be wrong in a case where a prisoner, taking advantage of an incident which occurred in what till then had been a fair fight, struck his opponent and knocked him over, thereby causing his death. *QUEEN v. KEWAL DOSAD*

[W. R., 1864, Cr., 36

23. ——— Fatal blow after quarrel—*Penal Code, s. 300, cls. (2) and (3).*—Two persons met each other in a drunken state and commenced a quarrel, during which they became grossly abusive to each other. This lasted for about half an hour, when one of them ran to his own house, distant 30 yards from the spot, and came back with a heavy pestle, with which he struck the other a violent blow on the left temple as the latter was rising, or had just risen from the ground, causing instant death. Held that the act was done with the intention of causing such bodily injury as was likely to cause death, and also with the knowledge that such act was likely to cause death, and that the offence committed was murder within the provisions of cls. (2) and (3), s. 300, Penal Code. *QUEEN v. DASSER BHOOYAN*

[8 W. R., Cr., 71

24. ——— Blow with knowledge of likelihood to cause death.—*Absence of intention to kill.*—When a Judge acquits a prisoner of intention to kill, but admits that the prisoner struck the deceased with a highly lethal weapon, with the knowledge that the act was likely to cause death, the conviction should be of murder, and not of culpable homicide not amounting to murder. *QUEEN v. SOBEEL MAHEE*

5 W. R., Cr., 32

25. ——— Beating with knowledge of likelihood to cause death.—*Held* by the majority that, when four men beat another at intervals so severely as to cause death, they must be presumed to have known that by such acts they were likely to cause death, and that, when such acts were done without any grave or sudden provocation, or sudden fight or quarrel, the offence was murder and was not reduced to culpable homicide not amounting to murder by the absence of intention to cause death. *QUEEN v. POOSHOO*

4 W. R., Cr., 33

26. ——— Blow struck by order of another person.—*Death by beating.*—Where a blow is struck by A in the presence of and by the order of B, both are principals in the transaction; and where two persons join in beating a man and he dies, it is not necessary to ascertain exactly what the effect of each blow was. *QUEEN v. MAHOMED ASGAR*

[23 W. R., Cr., 11

QUEEN v. GOUR CHUNDER DAS

[24 W. R., Cr., 5

MURDER—continued.

27. ——— Presumption from consequences of act likely to cause death—*Culpable homicide.*—Appellant, having armed himself with a sword, struck in the dark at certain persons in a house, causing wounds which resulted in the death of one person. Held per *JACKSON, J.*—That such conduct raises an inference that he intended to cause death. Per *AINSLIE, J.*—That though he probably did not see how his blows were directed, as he struck them with a deadly weapon regardless of consequences, he must have known that his act was imminently dangerous, and that it must, in all probability, cause such bodily injury as was likely to cause death. Per *CUNNINGHAM, J.*—That the offence was culpable homicide, and not murder, being an unpremeditated act of reckless violence rather than an act done with the knowledge or intention which is essential to constitute murder. *BEJADHUR RAI v. EXPRESS*

2 C. L. R., 211

28. ——— Conspiracy to kill—*Penal Code, s. 302.*—*L, C, K, and D* conspired to kill *S*. In pursuance of such conspiracy, *L* first and then *C* struck *S* on the head with a lathi and *S* fell to the ground. While *S* was lying on the ground, *K* and *D* struck him on the head with their lathis. Held (*STUART, C.J.*, dissenting) that, inasmuch as *K* and *D* did not commence the attack on *S*, and it was doubtful whether *S* was not dead when they struck him, transportation for life was an adequate punishment for their offence. *EXPRESS v. CHATTAR SINGH*

[I. L. R., 2 All., 33

29. ——— Knowledge of likelihood to cause death—*Penal Code, s. 300, cl. 4, and s. 314.*—To bring a case under cl. 4, s. 300 of the Penal Code, it must be proved that the accused in committing the act charged knew that it must, in all probability, be likely to cause death, or that it would bring about such bodily injury as would be likely to cause death. Where a poisonous drug was administered to a woman to procure miscarriage, and death resulted, and it was not proved that the accused knew that the drug would be likely to cause death, etc., they were acquitted by the High Court of murder and convicted of an offence under s. 314 of the Penal Code. *QUEEN v. KALA CHAND GOPE*

10 W. R., Cr., 59

30. ——— Death caused by snake-charmers—*Culpable homicide.*—Certain snake-charmers, by professing themselves able to cure snake-bites, induced several persons to let themselves be bitten by a poisonous snake. From the effect of the bite, three of these persons died. Held that the offence was murder under cls. 2 and 3 of s. 300 of the Penal Code, unless it could be brought within the 5th exception to that section. If the prisoners, really believing themselves to have the powers they professed to have, induced the deceased to consent to take the risk of death, the offence would be culpable homicide not amounting to murder. *QUEEN v. PUNAI FATTAMA*

[3 B. L. R., A. Cr., 25; 12 W. R., Cr., 7

31. ——— *Penal Code, ss. 304, 304A—Culpable homicide—Causing death by negligence.*—A snake-charmer exhibited in public

MURDER—concluded

a venomous snake, whose fangs he knew had not been extracted, and to show his own skill and dexterity, but without any intention to cause harm to any one, placed the snake on the head of one of the spectators, the spectator tried to push off the snake, was bitten and died in consequence. *Held* the snake-charmer was guilty, under s 304 of the Penal Code, of culpable homicide not amounting to murder, and not merely of causing death by negligence, an offence punishable under s 304A. *EMPEROR v GOVIND DOOLEY* I L R, 5 Calc, 351; 4 C L R, 580

extreme penalty *QUEEN v LISHONATH BUNNEA*
[8 W R, Cr, 63]

33. ——— Presumption of death — In a

murder was upheld. *QUEEN v. POORUSOOLAH SIKH DAR* 7 W R, Cr, 14

[7 W R, Cr, 100]

35. ——— Charge of murder where no body is found—*Penal Code, s 302—"Corpus delicti"*—The mere fact that the body of the murdered person has not been found is not a ground for refusing to convict the accused person of the murder. *EMPEROR v BHAGIRATH*

[I L R, 3 All, 383]

36. ——— Although under

convicted. *ADU SIKHDAR v. QUEEN* *EMPEROR*

[I L R, 11 Calc, 635]

37. ——— Conviction of murder where body is not found—*Sentence of death*—A Judge was held to have exercised a proper discretion in not passing sentence of death in a case in which the dead body was not found. *QUEEN v HENDROODEN* 11 W R, Cr, 20

MUSCAT ORDER IN COUNCIL

November 4th, 1897.

See HIGH COURT, JURISDICTION OF—*BOMBAY—CRIMINAL*

[I L R, 24 Bom, 471]

MUTARAF.

See TAX I L R, 9 Mad, 11

MUTINY ACT

s. 80.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—SALARY I L R, 1 All, 730

See SMALL CAUSE COURT, MORTGAGE—JURISDICTION—MILITARY MEN
[2 R L R, S N, 3, 7
6 Mad, 83]

s. 101.

See JURISDICTION OF CRIMINAL COURT—PROCEEDING BRITISH SUBJECTS.
[I L R, 5 Calc, 124]

s. 103.

See SMALL CAUSE COURT, MORTGAGE—JURISDICTION—MILITARY MEN
[2 Mad, 380]

MUTUAL ACCOUNTS OR DEALINGS.

See CASES UNDER LIMITATION ACT, 1877.
ART 50

MUTUAL ASSURANCE SOCIETY

See COMPANY—FORMATION AND REGISTRATION I L R, 17 Calc, 788

MUTUAL BENEFIT SOCIETY

1. Power of majority to alter rules—*Payment of pensions in England—Adjustment of payments in accordance with rate of exchange—Interest of subscriber to society* The U S & F Fund, a society established assisted in rule of the Rules of the Society "to provide for the maintenance of the widows and children of those who shall subscribe to it upon the terms and conditions specified below, or upon such others as may be determined upon by the subscribers or by a majority of them" had prior to 1850 passed a rule (33) that "widows being incumbents on the Fund, shall be paid their pensions at any place they may desire subject to the usual charges of maintenance the persons of children, being incumbents on the Fund shall also be so paid and on

laws of the Institution (rule 25) and by rule 27 had to pay a fee equal to ten per cent on the amount of monthly pension insured. Rule 60 gave power to

in Europe at the fixed rate of two shillings in the pound. On the 1st July 1850, exchange being adverse on remittances from India to England, a rule was passed, which provided that "incumbents on the Fund shall be paid their annuities in India in full, and those residing in Europe at the rate of exchange

MUTUAL BENEFIT SOCIETY—continued.

fixed for the official year by the Secretary of State; annuities already due or hereafter becoming due on risks accepted before the 1st July 1876 shall be payable to incumbents residing in Europe at the fixed rate of two shillings to the rupee." Exchange continuing to decline, on the 22nd May 1880, the Society, by the votes of 553 against 505 of the subscribers, passed the following rule: "Annuities already due, or becoming due before the 1st May 1880, on risks accepted before the 1st July 1876, shall be payable to incumbents residing in Europe at the fixed rate of two shillings to the rupee: but all other annuities due, or becoming due, shall be paid, if to incumbents in India, in full, and if to incumbents residing in Europe in London, at the market rate of exchange." The plaintiffs were the widow and children of *F*, a member of the Society, who was admitted as a subscriber for the benefit of his widow in November 1871 for the benefit of his son in September 1873, and for the benefit of his daughter in November 1874. He commenced to pay an increased subscription for the benefit of his son in September 1878. He was not one of the majority who voted in favour of the rule of the 22nd May 1880, though he attended the meeting of subscribers. He died on the 25th June 1880, having up to that time duly paid his subscription to the Fund. In a suit in which the plaintiffs, who were residing in England, claimed to be paid their pensions at the rate of two shillings in the rupee,—*Held* that *F* had no vested interest at the time of the passing of the rule of the 22nd May 1880; that the plaintiffs were, with respect to their pensions, bound by the terms of that rule, which a majority of the subscribers had full powers to pass so as to affect the nominees of all existing subscribers, and therefore the suit should be dismissed. Rule 41 gave an undue advantage to one class of subscribers, which was *extra vires* and open to correction under rule 60 by a majority of the subscribers. The Society being one for the equal benefit of all subscribers, even if rule 60 did not give power to adjust payments in accordance with the rate of exchange, such a power might be implied for the purpose of continuing the business of the Association. *FALLER v. MACLEWEN*

[I. L. R., 7 Calc., 1; S. C. L. R., 577]

2. — — — — **Madras Civil Service Annuity Fund.—Refund of excess subscriptions, Right to.**—The Madras Civil Service Annuity Fund was established in 1825 for the purpose of providing annuities to the Civil Servants of the East India Company in the Madras Presidency on retiring from service. The annuities were to be provided for by subscriptions of the Civil Servants to that Fund to the amount of one half and by contributions by the East India Company to the extent of the other half. These contributions were to be received by trustees and applied by them to make good the deficiency which was to be supplied by the Company. It appeared that in some instances the trustees of the Fund, where an excess of subscriptions had been paid by a subscriber entitled to an annuity beyond the half value of the annuity, had returned the excess. *R*, a subscriber from the commencement, had contributed beyond the half value of his annuity. *Held* that, although the regulations of the Fund did not

MUTUAL BENEFIT SOCIETY—concluded.

justify a refund to a subscriber of the amount of his subscriptions in excess of the prescribed amount, yet that the practice which had prevailed of refunding the contributions in excess, and the acquiescence of the East India Company in such practice, precluded the Company from disputing the right of the subscriber to repayment of the surplus of his subscriptions in excess of the half value of the annuity payable out of the Fund. *Held* also that, *R* having become entitled to his annuity in 1852, his right to such repayment could not be affected by rules passed in 1853 prohibiting such refund, although *R* remained a subscriber in 1853. *EAST INDIA COMPANY v. ROBERTSON*

[4 W. R., P. C., 10; 7 Moore's I. A., 361]

3. — — — — **Rules of Benefit Society—Power to alter rules.**—The Bombay Uncovenanted Service Family Pension Fund was a voluntary society established in 1850. Its object was to provide pensions for the widows of its members. One of its rules provided that the rules of the society were subject to such additions and alterations as might from time to time be sanctioned by the general body of subscribers, and by the form of application for admission as a member each applicant promised and engaged to abide by the rules of the society. The plaintiff became a member in 1875. At that time one of the rules (which had been passed in 1871) provided that the pensions of widows resident in Europe should be payable to them at the rate of 2s. per rupee. On the 20th July 1895 the society passed a new rule which provided that all pensions due or becoming due after the 31st July 1895 should be paid to incumbents residing in Europe or the colonies at the market rate of exchange on the day of remittance. The plaintiff contended that the society was not competent to alter the rule passed in 1871 by which he had been induced to join the society, and he prayed for a declaration that his wife, if and when she became a widow, would be entitled to have her pension paid at par. *Held*, dismissing the suit, that the society was competent to alter its rules, and that the plaintiff was bound by such altered rules. The contract with the plaintiff was that his widow, if he left one, should receive such pension as the rules prescribed, and that the rules were liable to alteration by a majority at a general meeting to which he would be subject so long as he remained a member. *STEVENS v. BEDFORD*

[I. L. R., 22 Bom., 451]

MUTUAL CREDIT.

See INSOLVENT ACT, s. 39.

[I. L. R., 19 Calc., 148]

MUTWALLI.

See CASES UNDER MAHOMEDAN LAW—
ENDOWMENT.

Suit to remove—

See ACT XX OF 1863, s. 18.

[15 B. L. R., 167]

